



DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

Farm Service Agency

7 CFR Parts 701 and 760

Commodity Credit Corporation

7 CFR Parts 1400, 1416, 1437, and 1450

[Docket ID: USDA-2021-0012]

RIN 0503-AA75

Pandemic Assistance Programs and Agricultural Disaster Assistance Programs

AGENCY: Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Office of the Secretary, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule announces Phase 2 of the Emergency Relief Program (ERP), which provides assistance to producers who suffered crop losses due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, and qualifying droughts occurring in calendar years 2020 and 2021. It also announces Pandemic Assistance Revenue Program (PARP), a new program that provides support for agricultural producers impacted by the COVID-19 pandemic. In addition, this rule makes changes to the Coronavirus Food Assistance Program (CFAP); the Emergency Conservation Program (ECP); the Emergency Forest Restoration Program (EFRP); the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP); the Livestock Forage Disaster Program (LFP); the Livestock Indemnity Program (LIP); the Noninsured Crop

Disaster Assistance Program (NAP); and general payment eligibility provisions. This rule also makes a technical correction to the Biomass Crop Assistance Program (BCAP).

DATES: *Effective date:* **[Insert date of publication in the *FEDERAL REGISTER*].**

Comment due date: For PARP, ECP, and ERP, we will consider comments on the information collection requirements under the Paperwork Reduction Act that we receive by **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*].**

ADDRESSES: We invite you to submit comments on the information collection requirements. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to: www.regulations.gov and search for docket ID USDA–2021–0012. Follow the online instructions for submitting comments.
- Mail, Hand-Delivery, or Courier: Director, Safety Net Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250–0522. In your comment, specify the docket ID USDA–2021–0012.

Comments will be available for inspection online at [http:// www.regulations.gov](http://www.regulations.gov).

Copies of the information collection may be requested by contacting Kathy Sayers or Shanita Landon, respectively (see **FOR FURTHER INFORMATION CONTACT** below). You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For CFAP, ERP, ELAP, LFP, LIP, NAP, PARP, and PARP information collection activity, and payment eligibility, Kathy Sayers; telephone: (202) 720-6825; email: kathy.sayers@usda.gov. For ECP, EFRP, and BCAP, Shanita Landon; telephone: (202) 690-1612; email: shanita.landon@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

This rule announces ERP Phase 2 and PARP, a new program. In addition, this rule amends the CFAP regulations to provide an additional CFAP 2 payment for underserved producers¹; makes clarifying changes based on previously implemented provisions of the Consolidated Appropriations Act, 2021 (CAA); and amends the payment provisions for producers of swine. It also updates provisions for and makes technical changes to the regulations for BCAP, ECP, ELAP, LFP, LIP, NAP, and payment eligibility provisions of 7 CFR part 1400, as described in this document.

ERP Phase 2

Division B, Title I, of the Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. 117– 43) provides \$10 billion for necessary expenses related to losses of crops (including milk, on-farm stored commodities, crops prevented from planting in 2020 and 2021, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of droughts, wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, quality losses of crops, and excessive moisture occurring in calendar years 2020 and 2021. FSA previously announced ERP Phase 1 through a notice of funds availability on May 18, 2022 (87 FR 30164-30172)², which provided assistance for crop, tree, bush, and vine losses through a streamlined process with pre-filled applications using data already on file with FSA or the Risk Management Agency (RMA), as a result of the producer previously receiving a NAP payment or a crop insurance indemnity. This rule provides the eligibility requirements, application process, and payment calculations for ERP Phase

¹Throughout this document, the term “underserved farmer or rancher” refers to a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

²A clarification to the notice of funds availability for ERP Phase 1 was published on August 18, 2022 (87 FR 50828-50830).

2, which is intended to address eligible crop losses not included in ERP Phase 1.³ ERP Phase 2 provides assistance for necessary expenses related to both production and quality losses of eligible crops. Where loss information is not already on file with FSA or RMA through NAP or Federal crop insurance, and therefore included in ERP Phase 1, FSA has determined that the best approximation of such losses is a producer's decrease in gross revenue, which will reflect losses in both production and quality without requiring the more extensive calculations and documentation required under previous programs addressing crop losses due to disaster events.⁴ Using a decrease in gross revenue in the calculation of ERP Phase 2 payments also captures a producer's loss due to a qualifying disaster event regardless of whether the loss occurs before harvest or after harvest while the crop is in storage, further streamlining the delivery of assistance.

Decreases in gross revenue are strongly correlated to crop production and quality losses due to disaster events. Gross revenue is essentially the aggregation of the value of all of a producer's crops, and a decrease in gross revenue in a year when a producer suffered a loss due to a disaster event reflects the producer's crop losses resulting from decreased production or from obtaining a lower price due to a reduction in quality for that year. Previous FSA disaster assistance programs have similarly been based on a producer's loss of value compared to their expected value, using payment calculations based on crop acres, price, and yield (or inventory and price for value loss crops) as a way to estimate the value of a crop. While ERP Phase 2 uses a different calculation than

³Additional assistance authorized by the Extending Government Funding and Delivering Emergency Assistance Act for losses to milk and livestock will be announced in subsequent documents to be published in the *Federal Register*. FSA previously announced Phase 1 of the Emergency Livestock Relief Program (ELRP), which provided payments to producers who faced increased supplemental feed costs as a result of forage losses due to a qualifying drought or wildfire in calendar year 2021 on April 4, 2022 (87 FR 19465-19470).

⁴Assistance for crop losses that occurred prior to harvest due to disaster events in the 2018 and 2019 calendar years was provided through two separate programs: the Wildfires and Hurricanes Indemnity Program Plus (WHIP+) for production losses, and the Quality Loss Adjustment (QLA) Program for quality losses.

previous disaster assistance programs to capture that value loss, it accounts for crop losses in a streamlined way that minimizes the burden on producers and improves efficiency of application processing by FSA county offices.

ERP Phase 2 Eligibility

To be eligible for ERP Phase 2, a producer must have suffered a loss of an eligible crop due in whole or in part to a qualifying disaster event that occurred in the 2020 or 2021 calendar year (referred to as the “disaster year”). Qualifying disaster events include wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021. “Qualifying drought” means an area within the county was rated by the U.S. Drought Monitor as having a drought intensity of D2 (severe drought) for 8 consecutive weeks or D3 (extreme drought) or higher level for any period of time during the applicable calendar year.

To receive a payment for ERP Phase 2, the eligible crop loss must have resulted in a decrease of allowable gross revenue, as described in the next section of this document. “Eligible crop” for ERP Phase 2 means a crop, including eligible aquaculture, that is produced in the United States as part of a farming operation and is intended to be commercially marketed. It excludes crops for grazing, aquatic species that do not meet the definition of aquaculture, *Cannabis sativa L.* and any part of that plant that does not meet the definition of hemp, and timber.

For ERP, “producer” refers to a person or legal entity who was entitled to a share in the eligible crop available for marketing or would have shared had the eligible crop been produced and marketed. In addition, to be eligible for ERP Phase 2, a producer must be one of the following:

- 1) Citizen of the United States;

- 2) Resident alien, which for purposes of this subpart means “lawful alien” as defined in 7 CFR part 1400;
- 3) Partnership organized under State Law;
- 4) Corporation, limited liability company, or other organizational structure organized under State law; or
- 5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

ERP Phase 2 Allowable Gross Revenue

In general, ERP Phase 2 payments are based on the difference in allowable gross revenue between a benchmark year (2018 or 2019), reflective of a typical year, as elected by the producer, intended to represent a typical year of revenue for the producer’s operation, and the applicable disaster year (2020 or 2021). For the purposes of ERP Phase 2, “allowable gross revenue” includes revenue from:

- Sales of eligible crops produced by the producer, which includes sales resulting from value added through post-production activities (for example, sales of jam from the processing of strawberries) that were reportable on IRS Schedule F;
- Sales of eligible crops a producer purchased for resale that had a change in characteristic due to the time held (for example, a plant purchased at a size of 2 inches and sold as an 18-inch plant after 4 months), less the cost or other basis of such eligible crops;
- The taxable amount of cooperative distributions directly related to the sale of the eligible crops produced by the producer;
- Benefits under the following agricultural programs: 2017 Wildfires and Hurricanes Indemnity Program (WHIP), Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC), Biomass Crop Assistance

Program (BCAP), Loan Deficiency Payment (LDP) program, marketing loan gains (MLG) under the Marketing Assistance Loan (MAL) program, 2018 and 2019 Market Facilitation Programs (MFP), Seafood Trade Relief Program (STRP), and the On-Farm Storage Loss Program;

- CCC loans, if treated as income and reported to IRS;
 - Crop insurance proceeds, minus the amount of administrative fees and premiums;
 - NAP payments, minus the amount of service fees and premiums;
 - ELAP payments for an aquaculture crop;
 - Payments issued through grant agreements with FSA for losses of eligible crops;
 - Grants from the Department of Commerce, National Oceanic and Atmospheric Administration, and State program funds providing direct payments for the loss of eligible crops or the loss of revenue from eligible crops;
 - Other revenue directly related to the production of eligible crops that IRS requires the producer to report as income;
 - For the applicable disaster year only, ERP Phase 1 payments issued to another person or entity for the producer's share of an eligible crop, regardless of the tax year in which the payment would be reported to IRS⁵;
- and

⁵ERP Phase 1 allowed producers who received pre-filled application forms to indicate shares in the crop. In some cases, payment for a producer's share of a crop may have been issued to a different person or entity than the producer applying for a related revenue loss under ERP Phase 2. Applications for ERP Phase 2 must include any ERP Phase 1 payments issued to another person or entity for the producer's share of an eligible crop in order to prevent duplicate benefits being issued for the same loss.

- For the benchmark year only, 2018, 2019 and 2020 WHIP+ and QLA payments.

The allowable gross revenue will be based on the year for which the revenue would be reported for the purpose of filing a tax return. Producers who file or would be eligible to file a joint tax return will certify their allowable gross revenue based on what it would have been had they filed taxes separately for the applicable year.

If a producer decreased their operation capacity in a disaster year, as compared to the benchmark year, the producer must certify to an adjusted benchmark revenue on form FSA-521 that represents the producer's reasonably expected allowable gross revenue for the disaster year prior to the impact of the qualifying disaster event. A producer may also certify to an adjusted benchmark revenue on form FSA-521 if the producer did not have a full year of benchmark allowable gross revenue or expanded their operation capacity in a disaster year, compared to their benchmark year. If requested by FSA, producers are required to submit documentation to support these adjustments within 30 calendar days of the request. The documentation to support an adjustment due to a change in operation capacity must show that the adjustment to the producer's benchmark revenue is due to an:

- Addition or decrease in production capacity of the farming operation;
- Increase or decrease in the use of existing production capacity; or
- Physical alterations that were made to existing production capacity.

Change in production capacity does not include crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or increasing the rate of fertilizers or chemicals.

If a producer began farming in 2020 or 2021 and did not have allowable gross revenue in a benchmark year, the producer may certify to an adjusted benchmark allowable gross revenue on form FSA-521 that represents what had been the producer's reasonably expected disaster year revenue prior to the impact of the qualifying disaster

event. If requested by FSA, documentation required to support a producer's certification must be provided within 30 calendar days of FSA's request, or the producer will be considered ineligible for ERP Phase 2. Acceptable documentation must be generated in the ordinary course of business and dated prior to the impact of the disaster event and includes, but is not limited to:

- Financial documents such as a business plan or cash flow statement that demonstrate an expected level of revenue;
- Sales contracts or purchase agreements; and
- Documentation supporting production capacity, use of existing production capacity, or physical alterations that demonstrate production capacity.

FSA is providing an optional form, FSA-521A, Continuation Sheet for Emergency Relief Program (ERP) Adjusted Revenue, to help producers calculate their adjusted benchmark revenue if they are certifying to an adjustment on FSA-521.

In addition to providing their allowable gross revenue for the benchmark and disaster years, producers will certify to the percentage of their expected allowable gross revenue from specialty and high value crops and the percentage from other crops for the applicable disaster year on their application form. This information is used in the payment calculation to determine the amount applied to the separate payment limitations for specialty and high value crops and for all other crops, as described later in this document. The percentages certified must be equal to the percentages that the producer would have reasonably expected for the disaster year if the qualifying disaster event had not occurred. For ERP Phase 2 purposes, "specialty crop" has the same meaning as in ERP Phase 1.⁶ A crop may be considered a high value crop based on either the crop

⁶As defined for ERP Phase 1, "specialty crops" means fruits, tree nuts, vegetables, culinary herbs and spices, medicinal plants, and nursery, floriculture, and horticulture crops. This includes common specialty crops identified by USDA's Agricultural

itself, or how the crop is marketed. High value crop includes any eligible crop not specifically identified as a specialty crop or listed in the definition of “other crop” (that is, cotton, peanuts, rice, feedstock, and any crop grown with an intended use of grain, silage, or forage), and it also includes any eligible crop, regardless of whether the crop is identified as a specialty crop or listed in the definition of “other crop,” if the crop is a direct market crop, organic crop, or a crop grown for a specific market in which specialized products can be sold resulting in an increased value compared to the typical market for the crops (for example, soybeans intended for tofu production), as determined by the Deputy Administrator for Farm Programs (Deputy Administrator).

Applying for ERP Phase 2

A completed FSA-521, Emergency Relief Program (ERP) Phase 2 Application, must be submitted to any FSA county office by the close of business on the date announced by the Deputy Administrator. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA.

Producers must also submit the following forms if not already on file with FSA within 60 days of the ERP Phase 2 application deadline:

- 1) Form AD-2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;
- 2) Form FSA-521A, Continuation Sheet for Emergency Relief Program (ERP) Adjusted Revenue, if applicable;
- 3) Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, applicable for the program year or years for which the producer is applying for ERP⁷;

Marketing Service at <https://www.ams.usda.gov/services/grants/scbgp/specialty-crop> and other crops as designated by the Deputy Administrator for Farm Programs.

⁷An individual who has filed CCC-860 certifying their status as a socially disadvantaged, beginning, or veteran farmer or rancher for a prior program year is not

- 4) Form CCC-901, Member Information for Legal Entities, if applicable;
- 5) Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- 6) Form FSA-510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification, for a legal entity and all members of that entity, for each applicable program year, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400; and
- 7) Form AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification, for the ERP Phase 2 applicant and applicable affiliates as provided in 7 CFR part 12.

If requested by FSA, the producer must provide additional documentation that establishes the producer's eligibility for ERP Phase 2. If supporting documentation is requested, the documentation must be submitted to FSA within 30 calendar days from the request or the application will be disapproved by FSA. FSA may request supporting documentation to verify information provided by the producer and the producer's eligibility including, but not limited to, the producer's:

- 1) Allowable gross revenue as reported on the ERP Phase 2 application;

required to submit a subsequent CCC-860 certifying their status for a later program year because an individual's status as socially disadvantaged would not change in different years, and their certification as a beginning or veteran farmer or rancher includes the relevant date needed to determine for what program years the status would apply. An entity that has filed CCC-860 certifying its status as a socially disadvantaged, beginning, or veteran farmer or rancher for a prior program year is not required to submit a subsequent certification of its status for a later program year unless the entity's status has changed due to changes in membership. Because a producer's status as a limited resource farmer or rancher may change annually depending on the producer's direct and indirect gross farm sales, those producers must submit CCC-860 for each applicable program year.

- 2) Percentages of the expected allowable gross revenue from specialty and high value crops and other crops; and
- 3) Ownership share in the agricultural commodities.

ERP Phase 2 Payment Calculation

Although producers will be able to apply for both the 2020 and 2021 disaster years, as applicable, on one form, ERP Phase 2 payments will be calculated separately for each disaster year. If a producer indicates that they have expected revenue for both specialty and high value crops and other crops for a disaster year, a payment will be calculated separately for specialty and high value crops and other crops for a disaster year.

To determine a producer's ERP Phase 2 payment amount, FSA will calculate:

- 1) The ERP factor of 70 percent⁸ multiplied by the producer's benchmark year allowable gross revenue, adjusted according to 7 CFR 760.1903, if applicable, minus
- 2) The producer's disaster year allowable gross revenue; minus
- 3) The sum of the producer's net ERP Phase 1 payments for the 2020 program year, if the calculation is for the 2020 disaster year, or for the 2021 and 2022⁹ program years, if the calculation is for the 2021 disaster year; minus
- 4) The sum of the producer's net CFAP payments (excluding payments for contract producer revenue), net 2020 WHIP+ payments, and net 2020 Quality

⁸The Extending Government Funding and Delivering Emergency Assistance Act provides that the total amount of payments cannot exceed 70 percent of the loss for producers who did not obtain federal crop insurance or NAP coverage for the crop incurring the losses. .

⁹For ERP Phase 1, the program year was based on the crop year, as defined in the applicable crop insurance policy or NAP provisions, and 2022 was included because a qualifying disaster event occurring in the 2021 calendar year may have caused a loss of a crop during the 2022 crop year. The program year for ERP Phase 2 is based on the disaster year (2020 or 2021) because the payment is based on a producer's allowable gross revenue, which may include revenue from multiple crops.

Loss Adjustment (QLA) Program payments, if the calculation is for the 2020 disaster year; and

- 5) Multiplied by the percentage of the expected disaster year revenue for specialty and high value crops or other crops, as applicable.

ERP Phase 2 payments are subject to the availability of funds. FSA will issue an initial payment equal to the lesser of:

- The amount calculated as described above; or
- A maximum initial payment of \$2,000.

If a producer has also received a payment under ERP Phase 1, FSA will reduce the producer's initial ERP Phase 2 payment amount by subtracting their ERP Phase 1 gross payment amount.¹⁰ If total calculated payments exceed the total funding available for ERP Phase 2, the ERP Factor may be adjusted and the final payment amounts will be prorated to stay within the amount of available funding. If there are insufficient funds, a differential of 15 percent will be used for underserved producers similar to ERP Phase 1, but with a cap at the statutory maximum of 70 percent.¹¹ For example, if the ERP Factor is set at 50 percent, the factor used for underserved producers will be 65 percent, but if the factor is set at 55 percent or higher, the factor for underserved producers will be capped at 70 percent. An initial payment to a producer will not be recalculated or

¹⁰If the producer's ERP Phase 1 payment is equal to or exceeds the producer's initial ERP Phase 2 payment amount, the producer will not receive an initial ERP Phase 2 payment.

¹¹FSA calculates payments based on a higher payment factor for underserved farmers and ranchers (or specific groups included in that term) in several programs, such as ECP, ELAP, and the Tree Assistance Program. FSA has also used higher payment factors for these producers in several recently announced programs: the Food Safety Certification for Specialty Crops Program, the Organic and Transitional Education and Certification Program, ELRP Phase 1, and ERP Phase 1. In addition, NAP provides a reduced service fee and premium for underserved farmers and ranchers. This approach supports the equitable administration of FSA programs, as underserved farmers and ranchers are more likely to lack financial reserves and access to capital that would allow them to cope with losses due to unexpected events outside of their control.

reduced if the total calculated ERP Phase 2 factored payment for that producer is less than the initial payment amount.

If a producer receives additional assistance through CFAP or ERP Phase 1 after a producer's ERP Phase 2 payment is calculated, the producer's ERP Phase 2 payment will be recalculated and the producer must refund any resulting overpayment.

ERP Phase 2 Payment Limitation and Attribution

As required by the Extending Government Funding and Delivering Emergency Assistance Act and consistent with 7 CFR 760.1507, the payment limitation for ERP is determined by the producer's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, if the producer's average adjusted gross farm income is less than 75 percent of the producer's average adjusted gross income (AGI) for the 3 taxable years preceding the most immediately preceding complete tax year, a producer, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in payments for specialty crops and high value crops¹² and \$125,000 in payment for all other crops under:

- 1) ERP Phase 1 for program year 2020 and ERP Phase 2 for program year 2020, combined; and
- 2) ERP Phase 1 for program years 2021 and 2022¹³ and ERP Phase 2 for program year 2021, combined.

If at least 75 percent of the producer's average AGI is derived from farming, ranching, or forestry related activities and the producer provides the required certification

¹²High value crops were not defined in ERP Phase 1; therefore, only ERP Phase 1 payments to specialty crops, as defined in the ERP Phase 1 notice, will be counted toward the increased payment limitation for specialty and high value crops.

¹³For ERP Phase 1, the program year was based on the crop year, as defined in the applicable crop insurance policy or NAP provisions, and 2022 was included because a qualifying disaster event occurring in the 2021 calendar year may have caused a loss of a crop during the 2022 crop year. The program year for ERP Phase 2 is based on the disaster year (2020 or 2021) because the payment is based on a producer's allowable gross revenue, which may include revenue from multiple crops.

and documentation, as discussed below, the producer, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to:

- 1) \$900,000 for specialty crops and high value crops combined for:
 - i) ERP Phase 1 for program year 2020 and ERP Phase 2 for program year 2020, combined; and
 - ii) ERP Phase 1 for program years 2021 and 2022 and ERP Phase 2 for program year 2021, combined; and
- 2) \$250,000 for all other crops for:
 - i) ERP Phase 1 for program year 2020 and ERP Phase 2 for program year 2020, combined; and
 - ii) ERP Phase 1 for program years 2021 and 2022 and ERP Phase 2 for program year 2021, combined.

The relevant tax years for establishing a producer's AGI and percentage derived from farming, ranching, or forestry related activities are:

- 1) 2016, 2017, and 2018 for program year 2020; and
- 2) 2017, 2018, and 2019 for program year 2021.

To receive more than \$125,000 in ERP payments, producers must submit form FSA-510, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certified AGI. If a producer requesting the increased payment limitation is a legal entity, all members of that entity must also complete form FSA-510 and provide the required certification according to the direct attribution provisions in 7 CFR 1400.105, "Attribution of Payments." If a legal entity would be eligible for the increased payment limitation based on the legal entity's average AGI derived from farming, ranching, or forestry related activities but a member of that legal entity either does not complete a form FSA-510 and provide the required certification or is not eligible for the increased payment limitation, the payment to the legal entity will be

reduced for the limitation applicable to the share of the ERP Phase 2 payment attributed to that member.

If a producer files form FSA-510 and the accompanying certification after their ERP Phase 2 payment is issued but before the deadline announced by FSA, FSA will process the form FSA-510 and issue the additional payment amount if a maximum initial payment amount has not been reached.

A payment made to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility. Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as described in § 760.1906.

Like other programs administered by FSA, payments made to an Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), will not be subject to payment limitation.

ERP Phase 2 Miscellaneous Provisions

If an ERP Phase 2 payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment with interest calculated from the date of the disbursement of the payment. If FSA determines that the producer intentionally misrepresented information provided on the producer's application, the application will be disapproved and the producer must refund the full amount of any payments to FSA with interest from the date of disbursement.

ERP Phase 2 Requirement to Purchase Crop Insurance or NAP Coverage

All producers who receive ERP Phase 2 payments are statutorily required to purchase federal crop insurance, or NAP coverage where crop insurance is not available, for the next 2 available crop years (Pub. L 117-43, 135 STAT. 357) as described in this

section and as determined by the Secretary. To identify which crops suffered losses that resulted in a revenue loss due to a qualifying disaster event, producers must complete form FSA-522, Crop Insurance and/or NAP Coverage Agreement. For each of those crops, a producer must file an acreage report and obtain federal crop insurance or NAP, as may be applicable:

- 1) At a coverage level equal to or greater than 60 percent for insurable crops; or
- 2) At the catastrophic level or higher for NAP crops.

The timing for the requirement to purchase federal crop insurance or NAP for the next 2 available crop years will be determined from the date a producer receives an ERP payment and may vary depending on the timing and availability of crop insurance or NAP for a producer's particular crops. The final crop year to purchase crop insurance or NAP coverage to meet the second year of coverage for this requirement is the 2026 crop year.

In situations where federal crop insurance is unavailable for a crop, a producer must obtain NAP coverage. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with an AGI greater than \$900,000 is not eligible to participate in NAP; however, producers with an AGI greater than \$900,000 are eligible for ERP. To reconcile this restriction in the 1985 Farm Bill and the requirement to obtain NAP or crop insurance coverage, a producer may meet the purchase requirement by purchasing Whole-Farm Revenue Protection (WFRP) crop insurance coverage, if eligible, or they may pay the applicable NAP service fee despite their ineligibility for a NAP payment. In other words, the service fee must be paid even though no NAP payment may be made because the AGI of the person or entity exceeds the 1985 Farm Bill limitation.

If both federal crop insurance and NAP coverage are unavailable for a crop, the producer must obtain WFRP crop insurance coverage, if eligible.

For all crops listed on form FSA-522, any producer who has the crop or crop acreage in subsequent years and who fails to obtain the 2 years of crop insurance or NAP coverage required as specified in this document, must refund the full amount of any ERP Phase 2 payments with interest from the date of disbursement. Any producer who does not plant a crop listed on form FSA-522 in a year for which this requirement applies is not subject to the crop insurance or NAP purchase requirement for the crop for that year.

Producers who received an ERP Phase 1 payment for a crop are not required to obtain additional years of crop insurance or NAP coverage for that crop, to the extent the producer is already complying with the requirement in connection with an ERP Phase 1 payment, if they also receive an ERP Phase 2 payment for a loss associated with that crop.

PARP

Secretary Tom Vilsack announced the USDA Pandemic Assistance for Producers initiative on March 24, 2021. Through that initiative, USDA is reaching a broader set of producers than in previous COVID-19 assistance programs, with a specific focus on strengthening outreach to underserved producers and communities and small and medium agricultural operations. PARP, a new program administered by FSA, is part of that initiative.

PARP will use funding authorized by the Consolidated Appropriations Act, 2021 (CAA; Pub. L. 116-260), which provides funding to prevent, prepare for, and respond to the COVID-19 pandemic by providing support for agricultural producers, growers, and processors impacted by coronavirus. This rule establishes PARP to respond to the COVID-19 pandemic by providing support for eligible producers of agricultural commodities who suffered an eligible revenue loss in calendar year 2020 due to the COVID-19 pandemic. PARP is intended to provide assistance to a wide variety of

agricultural producers, including those who produced agricultural commodities that were not eligible for CFAP 1 and 2 (7 CFR part 9).

For PARP, “producer” refers to a person or legal entity (including a general partnership or joint venture) who was in the business of farming to produce an agricultural commodity in calendar year 2020, and who was entitled to a share in the agricultural commodity available for marketing or would have shared had the agricultural commodity been produced and marketed. “Producer” also includes cattle feeder operations, which were not eligible for CFAP 1 and CFAP 2. To be eligible for PARP, a producer must:

- Have been in the business of farming during at least part of the 2020 calendar year; and
- Have had at least a 15 percent decrease in “allowable gross revenue”¹⁴ for the 2020 calendar year, as compared to:
 - The 2018 or 2019 calendar year (similar to the benchmark year for ERP Phase 2), reflective of a typical year, as elected by the producer, if they received allowable gross revenue during the 2018 or 2019 calendar years; or
 - The producer’s expected 2020 allowable gross revenue, if the producer had no allowable gross revenue in 2018 and 2019.¹⁵

In addition, to be eligible for PARP, a producer must be one of the following:

- A citizen of the United States;

¹⁴“Allowable gross revenue” is explained later in this section of this document.

¹⁵PARP provides assistance to participants whose allowable gross revenue for the 2020 calendar year was at or below 85 percent of the “benchmark” allowable gross revenue. This uses the same maximum level of coverage available under RMA’s Whole Farm Revenue Program (WFRP), coverage that requires 15 percent or more decrease in revenue to trigger a payment.

- A resident alien, which for purposes of this subpart means “lawful alien” as defined in 7 CFR part 1400;
- A partnership organized under State Law;
- A corporation, limited liability company, or other organizational structure organized under State law;
- An Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or
- A foreign person or foreign entity who meets all requirements as described in 7 CFR part 1400.

For PARP, “agricultural commodity” means a crop, aquaculture, livestock, livestock byproduct, or other animal or animal byproduct that is produced as part of a farming operation and is intended to be commercially marketed. It includes only commodities produced in the United States, and commodities produced outside the United States by a producer located in the United States and marketed inside the United States. It excludes:

- Wild free-roaming animals;
- Horses and other animals used or intended to be used for racing or wagering;
- Aquatic species that do not meet the definition of aquaculture;
- *Cannabis sativa L.* and any part of that plant that does not meet the definition of hemp; and
- Timber.

As provided in § 9.304, allowable gross revenue for PARP includes revenue from:

- Sales of agricultural commodities produced by the producer, including the sales resulting from value added through post-production activities (for example, sales of jam from the processing of strawberries);
- Sales of agricultural commodities a producer purchased for resale, less the cost or other basis of such commodities;
- The taxable amount of cooperative distributions directly related to the sale of the agricultural commodities produced by the producer;
- Benefits under certain federal agricultural programs and disaster programs (excluding conservation programs, CFAP 1 and 2, 2020 program year ERP, the Pandemic Livestock Indemnity Program (PLIP), and the Spot Market Hog Pandemic Program (SMHPP));
- CCC loans, if treated as income and reported to IRS;
- Crop insurance proceeds;
- Payments issued through grant agreements with FSA for losses of agricultural commodities;
- Grants from the Department of Commerce, National Oceanic and Atmospheric Administration and State program funds providing direct payments for the loss of agricultural commodities or the loss of revenue from agricultural commodities;
- Revenue from raised breeding livestock;
- Revenue earned as a cattle feeder operation;
- Other revenue directly related to the production of agricultural commodities that IRS requires the producer to report as income; and
- For 2020 allowable gross revenue, payments under the Pandemic Market Volatility Assistance Program regardless of the calendar year in which the payment was received.

An optional worksheet is available to assist producer's in computing their revenue from the sources listed above. Producers who file or would be eligible to file a joint tax return will certify their revenue based on what their revenue would have been had they filed taxes separately for the applicable year. Revenue earned as a contract producer of an agricultural commodity is not included in allowable revenue for PARP.

If a producer did not have a full year of revenue for 2018 or 2019 or physically expanded their operation in 2020, the producer may certify to an adjusted 2018 or 2019 allowable gross revenue on form FSA-1122A. Producers must provide documentation to support the adjusted amount within 30 calendar days of submitting their PARP application. The documentation must show that the producer added production capacity to the farming operation, increased the use of existing production capacity, or made physical alterations to existing production capacity that would have resulted in increased revenue in 2020. Increases in production capacity do not include crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or increasing the rate of fertilizers or chemicals.

If a producer did not have allowable gross revenue in 2018 and 2019 but was in the business of farming in 2020, the producer must certify on form FSA-1122A as to what had been their reasonably expected 2020 allowable gross revenue prior to the impact of the COVID-19 pandemic. Producers must provide documentation to support their expected 2020 allowable gross revenue within 30 days of submitting their PARP application. Acceptable documentation must be generated in the ordinary course of business and dated prior to the impact of the COVID-19 pandemic and includes, but is not limited to, financial documents such as a business plan or cash flow statement that demonstrates an expected level of revenue; sales contracts or purchase agreements; and documentation supporting production capacity, use of existing production capacity, or physical alterations that demonstrate production capacity.

PARP Application Process

FSA will accept PARP applications until the date announced by the Deputy Administrator. To apply for PARP, producers must submit a complete FSA-1122, Pandemic Assistance Revenue Program Application, in person, by mail, e-mail, facsimile, or other method announced by FSA to any FSA county office.¹⁶ Applicants must also submit all of the following items, if not previously filed with FSA:

- Form AD-2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;
- Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, applicable for the 2020 program year, if the applicant is an underserved farmer or rancher¹⁷;
- Form CCC-901, Member Information for Legal Entities, if applicable;
- Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- Form CCC-941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information, for the 2020 program year for the producer, including the legal entity's members, partners, shareholders, heirs, or beneficiaries as provided in 7 CFR part 1400;
- Form FSA-1123, Certification of 2020 Adjusted Gross Income, if applicable;

¹⁶The FSA county office locator can be found through the “Find Your Local Service Center” section on: <https://www.farmers.gov/>.

¹⁷For PARP, socially disadvantaged groups include the following: American Indians or Alaskan Natives, Asians or Asian-Americans, Blacks or African Americans, Hispanics or Hispanic Americans, Native Hawaiians or other Pacific Islanders, and women. Form CCC-860 is not required for underserved farmers and ranchers to receive a payment; however, failure to submit form CCC-860 will result in a producer’s payment being calculated using a lower payment factor. Also, see footnote 7.

- Form FSA-1122A, Pandemic Assistance Revenue Program (PARP) Application, if applicable;
- Form AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification, for the PARP applicant and applicable affiliates as provided in 7 CFR part 12.

The required eligibility forms specified above must be submitted no later than 60 days from the PARP application deadline. When the producer does not timely submit the required eligibility forms, or when a member of a legal entity who is required to submit AD-1026 has not done so, FSA will not issue a payment to the producer. When any other required eligibility forms are not timely submitted for a member of a legal entity, FSA will reduce the payment based on that member's ownership share of the legal entity.

In addition, producers must provide documentation within 30 calendar days of submitting the FSA-1122, if applicable, to verify:

- The producer's certified expected 2020 allowable gross revenue; and
- The physical expansion of a producer's operation in 2020.

If requested by FSA, the producer must provide additional documentation that establishes the producer's eligibility for PARP. If any supporting documentation is requested, the documentation must be submitted to FSA within 30 days from the request or the application will be disapproved by FSA.

PARP Payment Calculation

The PARP payment calculation is based on the difference in a producer's revenue compared to a prior "benchmark" year. Producers who had allowable gross revenue in 2018 or 2019 will elect which of those years is most reflective of a typical year to use as a benchmark for the purposes of calculating a PARP payment. FSA will determine the result of the producer's 2018 or 2019 allowable gross revenue, minus the producer's 2020 allowable gross revenue, multiplied by a payment factor. The adjusted 2018 or 2019

allowable gross revenue, as described above, will be used for producers who did not have a full year of revenue for 2019 or increased their operation size in 2020. The payment factor will be 90 percent for underserved farmers and ranchers who have filed CCC-860 certifying their status for the 2020 program year.¹⁸ The payment rate for all other producers will be 80 percent. The PARP payment will be equal to the result of that calculation minus any 2020 program year ERP payments and pandemic assistance received by the producer under CFAP 1 and 2 (not including any CFAP 2 payments for contract producer revenue), PLIP, and SMHPP. If a producer receives assistance through any of those programs after their PARP payment is calculated, their PARP payment will be recalculated and the producer must refund any resulting overpayment to FSA.

If a producer was in the business of farming in 2020 but did not have allowable gross revenue in 2018 and 2019, then the payment calculation will be equal to the producer's expected 2020 allowable gross revenue minus the producer's actual 2020 allowable gross revenue, multiplied by a payment factor of 90 percent for underserved farmers and ranchers who have filed the form CCC-860, or 80 percent for all other producers. As described above, the PARP payment will be equal to the result of that calculation minus any assistance received by the producer under CFAP 1 and 2 (not including any CFAP 2 payments for contract producer revenue), 2020 program year ERP, PLIP, and SMHPP, and the PARP payment will be recalculated if the producer receives additional payments under those programs. Those producers must provide documentation to support their certification of their expected 2020 allowable gross revenue within 30 days of submitting their PARP application or they will be ineligible for payment.

¹⁸See footnotes 7 and 11.

PARP payments will be issued after the application period ends. PARP payments are subject to the availability of funds and may be factored if total calculated payments exceed the available funding. PARP payments are not subject to offset.

PARP Payment Limitation, Average AGI Limitation, and Attribution

PARP payments are subject to a per person or legal entity payment limitation of \$125,000. USDA may establish a lower maximum payment amount per person, legal entity, or member of a joint venture or general partnership after the application period has ended if calculated payment amounts exceed available funding. Similar to the manner in which payment limitations are applied in the major commodity and disaster assistance programs administered by FSA, payments will be attributed to an individual through the direct attribution process used in those programs. The total payment amount of PARP payments attributed to an individual will be determined by taking into account the direct and indirect ownership interests of the individual in all legal entities participating in PARP.

A producer, other than a joint venture or general partnership, is ineligible for payments if the producer's average AGI, using the average of the adjusted gross incomes for the 2016, 2017, and 2018 tax years, is more than \$900,000, unless the producer's AGI for 2020 is \$900,000 or less. To be eligible for payment, a producer whose average AGI for 2016, 2017, and 2018 exceeds \$900,000 but whose 2020 AGI is \$900,000 or less must submit form FSA-1123 and provide a certification from a licensed CPA or attorney affirming the producer's 2020 AGI is not more than \$900,000. With respect to joint ventures and general partnerships, this AGI provision will be applied to each member of the joint venture and general partnership.

To be eligible for payment and facilitate administration of payment limitation, payment attribution, AGI, and rules applicable to foreign persons, producers that are a legal entity must provide the names, addresses, valid taxpayer identification numbers, and

ownership share of each person or each legal entity that holds or acquires a direct or indirect ownership interest in the legal entity. Payments to a legal entity will be reduced in proportion to a member's ownership share in cases where a person or legal entity holds less than a 10 percent direct or indirect ownership interest and fails to provide a taxpayer identification number to USDA.

PARP General Requirements

General requirements that apply to other FSA-administered commodity programs also apply to PARP, including compliance with the provisions of 7 CFR part 12, "Highly Erodible Land and Wetland Conservation."

The regulations in 7 CFR part 1400, subpart E, are applicable to foreign persons and legal entities containing members, stockholders, or partners who are not U.S. citizens or resident aliens that own more than 10 percent of the legal entity. In order for a foreign person to receive a PARP payment, the person must provide land, capital, and a substantial amount of active personal labor to the farming operation, as required by § 1400.401(a), and comply with the other requirements of subpart E.

Additionally, United States Federal, State, and local governments (including public schools) are not eligible for PARP payments.

Appeal regulations specified in 7 CFR parts 11 and 780 and equitable relief and finality provisions in 7 CFR part 718, subpart D, apply to determinations under PARP. The determination of matters of general applicability that are not in response to, or result from, an individual set of facts in an individual producer's application for payment are not matters that can be appealed. Such matters of general applicability include, but are not limited to, eligibility criteria, the payment calculation, and payment rates.

In the event that any application for a PARP payment resulted from erroneous information reported by the producer, the payment will be recalculated, and the producer must refund any excess payment to USDA, including interest to be calculated from the

date of the disbursement to the producer. If FSA determines that the producer intentionally misrepresented information provided on their application, the application will be disapproved and the producer must refund the full payment to FSA with interest from the date of disbursement. Any required refunds must be resolved in accordance with debt settlement regulations in 7 CFR part 3.

CFAP

USDA established CFAP to assist producers of agricultural commodities marketed in 2020 who faced continuing market disruptions, reduced farm-level prices, and increased production and marketing costs due to COVID-19 under authority provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; Pub. L. 116–136) and sections 5(b), (d), and (e) of the CCC Charter Act (15 U.S.C. 714c(b), (d), and (e)). USDA implemented CFAP through two rounds of payments (CFAP 1 and CFAP 2), administered by FSA. CFAP 1 was implemented through a final rule published in the *Federal Register* on May 21, 2020 (85 FR 30825–30835), with corrections published in the *Federal Register* on June 12, 2020 (85 FR 35799–35800), July 10, 2020 (85 FR 41328–41330), August 14, 2020 (85 FR 49593–49594), and September 21, 2020 (85 FR 59174–59175), and documents published in the *Federal Register* on May 22, 2020 (85 FR 31062–31065), June 12, 2020 (85 FR 35812), July 10, 2020 (85 FR 41321–41323), and August 14, 2020 (85 FR 49589–49593). USDA implemented CFAP 2 through a final rule published in the *Federal Register* on September 22, 2020 (85 FR 59380–59388). USDA also published a final rule in the *Federal Register* on January 19, 2021 (86 FR 4877–4883), to provide additional assistance for certain commodities under CFAP 1 and CFAP 2, but suspended implementation of that rule on January 20, 2021, to allow further evaluation of the assistance offered through CFAP. A final rule published on August 27, 2021 (86 FR 48013–48018), revised the CFAP 2 application deadline,

amended provisions for contract producers, and allowed producers of sales-based commodities to use 2018 sales for their payment calculation.

FSA is issuing an additional CFAP 2 payment to underserved farmers and ranchers.¹⁹ These payments will be issued under the same authority as the producers' previous CFAP 2 payments, using CCC funds as authorized by sections 5(b), (d), and (e) of the CCC Charter Act (15 U.S.C. 714c(b), (d), and (e)), except for payments for tobacco which will use remaining funds authorized by the CARES Act. As provided in § 9.203(p), the additional payment will be equal to 15 percent of a producer's previous CFAP 2 payment, subject to CFAP 2 payment limitation provisions in § 9.7.²⁰ Contract producers are not eligible for this additional payment because CFAP 2 payments to contract producers were authorized and funded through the CAA, which specified that those payments could "cover not more than 80 percent of revenue losses." Previous CFAP 2 payments to contract producers were already calculated to have covered 80 percent of contract producers' revenue losses.

As specified in § 9.4(e), CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, must be on file with FSA with a certification applicable for the 2020 program year to receive the additional payment.²¹ Producers who have not previously certified to their status for the 2020 program year may submit CCC-860 until the date announced by the Deputy Administrator to be eligible for the additional payment.

¹⁹See footnote 11.

²⁰This additional CFAP payment is similar to FSA's administration of ELRP Phase 1 and ERP Phase 1, which provided a 15 percent increase for payments to underserved producers and Congress has directed for underserved producers in some permanent disaster programs a 15 percent higher payment rate (Emergency Livestock Assistance Program or Emergency Conservation Program). Consistent with those programs, 15 percent has been determined as the increased rate for underserved producers.

²¹See footnote 7 for an explanation of how long an underserved producer's certification remains valid and the requirement to file CCC-860 in subsequent years.

The final rule published on January 19, 2021, included a provision for an additional CFAP 1 payment for hog and pig inventory owned between April 16, 2020, and May 14, 2020, based on a rate of \$17 per head. USDA suspended implementation of that provision and, after further review, USDA has determined that it will not issue the additional CFAP 1 payment for hog and pig inventory. To provide assistance to hog producers, FSA implemented the Spot Market Hog Pandemic Program (SMHPP), which provided targeted assistance to producers who sold hogs through a spot market sale from April 16, 2020, through September 1, 2020, the period in which those producers faced the greatest reduction in market prices due to the COVID-19 pandemic. Producers of hogs and pigs may also be eligible for PARP as previously discussed in this rule if they suffered an eligible revenue loss in 2020.

FSA previously implemented mandatory provisions of CAA that provide additional assistance for producers of cattle, price trigger crops, and flat-rate crops. Cattle payments are based on inventory owned between April 16, 2020, to May 14, 2020, based on a producer's previously filed CFAP 1 application, multiplied by the following payment rates per head: \$14.75 for slaughter cattle—mature cattle, \$63 for slaughter cattle—fed cattle, \$7 for feeder cattle less than 600 pounds, \$25.50 for feeder cattle 600 pounds or more, and \$17.25 for all other cattle. Payments for flat-rate and price-trigger crops, as defined in § 9.201, are equal to the eligible acres of the crop included on a producer's CFAP 2 application, multiplied by a payment rate of \$20 per eligible acre. This rule amends the payment calculations for cattle in § 9.102(c), price trigger crops in § 9.203(a), and flat-rate crops in § 9.203(b) for consistency with CAA to reflect these additional payments. FSA already issued these payments and producers were not required to take any additional action to qualify. These payments were subject to existing CFAP payment limitations and eligibility requirements.

This rule amends the general CFAP provisions to clarify how FSA will handle applications when the taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest in a business structure is not provided to USDA. To receive a CFAP payment, a person or legal entity must provide their name, address, and taxpayer identification number to USDA. In addition, consistent with most other FSA programs, a legal entity must provide the name, taxpayer identification number, address and ownership share of each person or legal entity that holds or acquires a direct or indirect ownership interest in the legal entity; however, the previous CFAP rules did not specify how the failure to provide such information would affect the producer's payment eligibility. Previously, FSA had implemented this requirement by determining that the producer was ineligible for payment. Rather than determining the producer ineligible for payment, in cases where a person or legal entity holding less than 10 percent direct or indirect ownership interest does not submit a taxpayer identification number, FSA will reduce the producer's payment in proportion to a member's ownership share when the taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of less than 10 percent at, or above, the fourth level of ownership in the business structure is not provided to USDA as provided in § 9.7(i). Additionally, a legal entity will not be eligible to receive payment when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater at, or above the fourth level of ownership in the business structure is not provided to USDA as provided in § 9.7(i). USDA is making this change because many farm operations suffered sales losses and had increased marketing costs in 2020 due to the COVID-19 pandemic, and the ability to receive a partial CFAP payment will assist those operations in managing those losses and costs. USDA is not reopening the CFAP application period; this change only affects how FSA will process CFAP applications currently on file.

This rule also updates references throughout 7 CFR part 9, subparts A through C, to refer specifically to those subparts rather than part 9 due to the addition of subpart D for PARP.

ECP, EFRP, and BCAP

The Agricultural Credit Act of 1978 (16 U.S.C. 2201), amended by section 2403 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334), authorizes ECP, and generally authorizes payments to farmers and ranchers to rehabilitate farmland damaged by certain natural disasters and to implement emergency water conservation measures in periods of severe drought. The ECP regulations are in 7 CFR part 701, subpart B.

Prior to this rule, land owned or controlled by the United States or States, including State agencies or other political subdivisions, was specified in the regulation as ineligible for cost share. This rule amends the general ECP provision at § 701.105 to allow eligibility of that land under certain conditions. The intent of this change is to allow producers who lease Federal and State land the opportunity to participate in ECP. This is consistent with the previous operational policy, which allowed payments as specified in the FSA Handbook 1-ECP.²²

This rule also corrects a typographical error in a section number to redesignate § 718.128 to be § 701.128. Prior to this rule, the ECP regulation authorized advance payment only for fence repair or replacement. This rule further amends § 701.128 to allow advance payments for all ECP practices. Consistent with the authorization for fence repair or replacement, ECP will provide advance payments of up to 25 percent of the cost for all ECP practices before the restoration is carried out. In the event this cost share assistance is not spent within 60 calendar days of being issued, the participant will be required to refund the advance cost-share payment. To reflect these changes, we are revising the section heading of § 701.128 to “Advance Payment.”

²²See https://www.fsa.usda.gov/Internet/FSA_File/1-ecp_r06_a01.pdf.

Additionally, this rule clarifies the duplicate benefits provisions in § 701.111.

The language was modified to further define parameters surrounding restoration activities being performed on the same piece of land. This will ensure that other Federal program-related benefits do not cover the same or similar expenses so as to create duplicative payments on the same piece of land and that any other Federal cost-share payments would not result in paying more than is authorized for ECP.

This rule also makes minor technical amendments to the existing ECP and EFRP regulations. Specifically, this rule:

- Adds the definition of “Socially disadvantaged farmer or rancher” and, within that definition, defines “Socially disadvantaged group” in § 701.2 to be consistent with the definition (7 U.S.C. 2279(a)) used in its authorizing legislation instead of defaulting to using the definition in § 718.2 and makes the same technical correction in § 1450.2 for the BCAP regulation;
- Removes outdated provisions, specifically removing: 7 CFR 701.44, 701.45, and 701.150 through 701.157;
- Adds the definition for “Forestland,” removes the definition of “Commercial forestland,” and corrects the definition of “Non-industrial private forestland” to remove the words “commercial forest” in § 701.102.
- Recognizes Pub. L. 117-180, the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, Division G, section 104(k)(3)(A) authorizing 100 percent Federal assistance for the cost of damages to producers associated with the “Hermit’s Peak/Calf Canyon” Fire. This rule is amending the regulations in 7 CFR 701.126, 701.127, and 701.226 to authorize the Secretary to waive the maximum limitations to the maximum extent otherwise allowed by law.

Supplemental Agricultural Disaster Assistance Programs

This rule makes discretionary changes to ELAP, LFP, and LIP to amend what is considered eligible livestock. Previously, livestock that were maintained for pleasure, roping, pets, or show were ineligible under ELAP, LFP, and LIP. This rule removes those restrictions in §§ 1416.104, 1416.204, and 1416.304 because FSA recognizes that animals maintained in a commercial operation for those purposes have value and could be available for marketing from the farm. In addition, FSA is clarifying that horses and other animals used or intended to be used for racing or wagering are considered ineligible livestock for ELAP, LFP, and LIP.

This rule also amends §§ 1416.104 and 1416.204 to remove the restriction on ostrich eligibility for LFP and ELAP. FSA is making this change because ostriches satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes; therefore, they are considered “grazing animals,” as defined in §§ 1416.102 and 1416.202, for the purpose of LFP and ELAP. This change is effective for the 2022 program year for both LFP and ELAP. ELAP requires a notice of loss to be filed within 30 days of when the loss is first apparent. Because that deadline may have passed for producers’ 2022 losses related to ostriches that occurred prior to publication of this rule, FSA is extending the deadline for those notices of loss through **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

This rule removes and reserves § 1416.5, which provides policy related to equitable relief determinations under ELAP, LFP, LIP, and the Tree Assistance Program (TAP). These programs are already subject to the general equitable relief provisions in 7 CFR part 718, subpart C; therefore, the provisions in § 1416.5 are unnecessary. Equitable relief for these programs will be administered in a manner that is consistent with other FSA programs to which part 718 applies. This rule also makes minor clarifications and technical corrections to the definition of “eligible loss condition” in §

1416.102 and to §§ 1416.103(a), 1416.103(d)(6), 1416.304(c)(3), 1416.305(g), and 1416.305(i).

NAP

FSA is amending the NAP regulations to update provisions related to applications for coverage. This rule updates the definition of “application for coverage” and 7 CFR 1437.7(a) to reflect that the application for coverage may be filed in any FSA county office, rather than only in the producer’s administrative county. The definition of “application for coverage” is also amended to provide flexibility as FSA reviews ways to streamline the application process for underserved farmers and ranchers who are eligible for catastrophic coverage without paying a service fee.

Following the change to the regulation, FSA intends to designate the CCC-860 to be an application for catastrophic coverage for NAP if filed before the deadline for application for the coverage period. The catastrophic coverage for underserved producers, once in effect, will be treated as continuous coverage for all eligible crops as long as the producer’s certification is valid.²³ Once the applicable status expires, a producer will need to apply for NAP coverage by the deadline and pay the applicable service fee. Many underserved producers have previously filed a certification of their underserved status with FSA, and those producers will be considered as having timely applied for catastrophic coverage for the 2022 crop year if the certification was filed before the deadline for application for the NAP coverage period.

As provided in 7 CFR 1437.2(e), the Deputy Administrator may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such other requirements does not adversely affect the operation of NAP; therefore, FSA is amending 7 CFR 1437.6(a) to remove an unnecessary provision related to

²³See footnote 7 for an explanation of how long an underserved producer’s certification remains valid and the requirement to file CCC-860 in subsequent years.

applications filed after the deadline. This rule also makes minor clarifications in 7 CFR 1437.7.

Payment Eligibility

Notification of interest requirements in § 1400.107 provide that an entity is ineligible for any payment under any program listed in § 1400.1, including certain programs administered by the Natural Resources Conservation Service (NRCS), when the names and taxpayer identification numbers for members holding an ownership interest in the legal entity are not provided to FSA. FSA has determined for the programs that it administers that prohibiting payments to a legal entity when member information is provided for some, but not all members, may adversely impact a farm operation's sustainability during times when farm program payments may be a large portion of the farm's income. FSA recognizes that names, addresses, valid taxpayer identification numbers, and ownership shares are important elements necessary to facilitate administration of FSA's rules for payment eligibility and establishing maximum payment limitations for each program. However, if a valid taxpayer identification number is not provided for a member of a legal entity, FSA is still able to make applicable determinations of eligibility and establish a maximum payment limitation for the legal entity and its other members.

With this rule change, for programs administered by FSA, FSA will reduce the payment to a legal entity in proportion to a member's ownership share in cases where a person or legal entity holding less than a 10 percent direct or indirect ownership interest fails to provide a valid taxpayer identification number, instead of prohibiting any payment to the legal entity. Additionally, a legal entity will not be eligible to receive payment when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater, at or above the fourth level of ownership in the business structure, is not provided to USDA. This

change will allow the legal entity to earn a partial payment based on the ownership shares of the members whose valid taxpayer identification numbers are submitted in cases where a member or members holding less than a 10 percent interest do not submit a valid taxpayer identification number.

NRCS has determined that such change in the notification requirements is not appropriate for the programs it administers. Unlike the intended purposes of FSA program payments, NRCS conservation program payments are not intended to provide economic support, including in times of disaster, to keep operations economically viable. Rather, they are payments made to reimburse a participant for costs incurred by a participant to voluntarily implement conservation practices and activities or payments made for the conveyance of a conservation easement. Therefore, for the programs NRCS administers, the participant is ineligible to receive any payment specified in § 1400.1(a)(7) or as NRCS provides in individual program regulations if the participant fails to provide: 1) the name, address, valid taxpayer identification number, and ownership share of each person; or 2) the name, address, valid taxpayer identification number, and ownership share of each legal entity, that holds or acquires an ownership interest in the legal entity.

For programs administered by FSA that are subject to the provisions of § 1400.107, this change will be effective for the current and subsequent program years. FSA is also making this change retroactive to the 2020 program year, subject to funding availability, because many farm operations suffered income losses in 2020 due to the COVID-19 pandemic, and the ability to receive a partial payment under the applicable programs will assist those operations in managing those losses. FSA is not reopening sign up periods for programs with payments that could be affected by this change; it will only affect the way payments are processed for legal entities that previously filed applications. Because the notification of interest provisions are general provisions that

are applicable to part 1400, subparts B, C, E, and F, FSA is also moving the notification of interest requirement from § 1400.107 in subpart B, Payment Limitation, to § 1400.10 in subpart A, General Provisions.

Notice and Comment and Effective Date

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits or contracts.

This rule governs pandemic assistance and disaster assistance payments to certain commodity producers and therefore falls within the benefits exemption for ERP, PARR, ECP, BCAP, and the disaster assistance programs.

As specified in 7 U.S.C. 9091, the regulations to implement the ELAP, LIP, LFP, and NAP are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553, and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

As specified in 16 U.S.C. 3648, the regulations to implement EFRP are exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule by section 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

The Office of Management and Budget (OMB) designated this rule as major under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been

significantly impacted by the COVID-19 outbreak and disaster events, which has resulted in significant declines in demand and market disruptions. USDA finds that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective upon publication in the *Federal Register*.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](https://www.regulations.gov).

Cost Benefit Analysis Summary

The cost-benefit analysis covers the unrelated programs or program changes, which are included in this rule, that largely address pandemic assistance or natural disaster assistance.

The accompanying rule announces *Phase 2 of the Emergency Relief Program (ERP)*, which addresses eligible crop losses not included in ERP Phase 1. ERP is

authorized in the Extending Government Funding and Delivering Emergency Assistance Act (Pub. L. 117– 43), which provided \$10 billion for expenses related to losses of crops (including milk, on-farm stored commodities, crops prevented from planting in 2020 and 2021, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of droughts, wildfires, hurricanes, and other events occurring in calendar years 2020 and 2021. Targeted outlays for ERP Phase 2 are \$1.2 billion; a pro-rate in payments is likely as gross outlays are projected at \$1.5 billion (see Table 1).

Two programs—including a new pandemic assistance program and additional assistance for underserved producers—address COVID-19 losses. Prior rules associated with the COVID-19 pandemic, CFAP 1, CFAP 2, and CFAP 2: Producers of Sales-Based Commodities and Contract Producers, assisted producers of agricultural commodities marketed in 2020 who faced continuing market disruptions, reduced farm-level prices, and increased production and marketing costs due to COVID-19. The additional costs are associated with declines in demand, surplus production, or disruptions to shipping patterns and marketing channels.

In implementing the pandemic related programs, USDA determined that additional assistance was necessary:

- PARP will assist producers with revenue loss resulting from the COVID-19 pandemic for eligible agricultural commodities. Payments will be made on a whole farm basis and not on a commodity-by-commodity basis. The aggregate allocation for PARP is targeted at \$250 million; a pro-rate in payments is likely as gross outlays are projected at \$2.7 billion (Table 1).
- CFAP 2 recipients who are underserved (beginning, limited resource, socially disadvantaged, and veteran farmers and ranchers), excluding contract producers, will receive a 15-percent top-up payment. Net outlays

are estimated at \$325 million (Table 1). As few underserved producers are likely to have AGI issues or reach the payment limit, gross and net outlays are assumed to be identical.

The other changes relate to existing FSA programs or requirements:

- *Expanded Eligibility of Animals in Livestock Disaster Programs*— This rule makes discretionary changes to ELAP, LFP, and LIP to amend the definition of eligible livestock. Previously, animals that contributed to the commercial viability of an operation and were maintained for the purposes of pleasure, roping, hunting, pets, or show, as well as animals intended for consumption by an owner, lessee, or contract grower, were ineligible for ELAP, LFP, and LIP. This rule removes those restrictions. Estimated net outlays (accounting for AGI considerations, payment limits, and other reductions) are \$17.7 million annually.
- *Flexibility in Non-Insured Crop Disaster Assistance Program (NAP) Enrollment for Underserved Producers*—FSA is updating NAP provisions regarding program flexibilities for underserved producers. For example, the “application of coverage” is amended to provide flexibility as FSA reviews ways to streamline the application process for underserved farmers and ranchers. Net outlays are estimated at \$4.3 million annually (identical to the gross outlay estimate).
- *Notification of Interest Changes*—Prior to this rule, a legal entity was ineligible for farm programs when the names and valid taxpayer identification numbers for all members holding an ownership interest in the entity were not provided to USDA. Now, a legal entity can receive a partial payment in cases where a person or legal entity holding less than a

10 percent direct or indirect ownership interest fails to provide a taxpayer identification number. Net outlays are estimated at \$3.7 million annually.

- *ECP Expansion to Public Lands (that is, Federally- and State-owned Land)* — ECP provides payments to farmers and ranchers to rehabilitate farmland damaged by certain natural disasters and to implement emergency water conservation measures in periods of severe drought. ECP eligibility on public lands has not been included in the regulation until now. ECP coverage of public lands has been FSA policy, as specified in the FSA handbook, for many years, however, and FSA staff in the field have provided ECP assistance to both public and private lands since at least the 1990s. As a result, no increase in net outlays is expected.
- *ECP and EFRP and the Hermit's Peak/Calf Canyon Fire* — Section 104 (3) (A) of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 authorizes the Federal government to pay 100 percent of the ECP and Emergency Forest Restoration Program (EFRP) cost for damage associated with the Hermit's Peak/Calf Canyon Fire. This fire burned over 340,000 acres from April 2022 to June 2022 and was the largest wildfire in recorded history in New Mexico. The cost-share rate for both ECP and EFRP, prior to this legislation, was generally 75 percent regardless of location. The legislation applies only to the locale of the Hermit's Peak/Calf Canyon Fire. The expected net cost is \$22.5 million for FY 2023.

Gross outlays for these items are estimated at \$4.5 billion (see Table 1). After taking into account AGI considerations and payment limitations, as well as the targeted caps on ERP Phase 2 and PARP spending, net outlays are estimated at \$1.8 billion. ERP Phase 2 accounts for about two-thirds of expected total net outlays.

FSA will administer all programs in Table 1. Producers must fill out paperwork to participate in these programs, and the associated administrative costs are estimated at \$18.4 million. Note that ERP Phase 2, PARP, and the Hermit’s Peak/Calf’s Canyon ECP/EFRP fire item use exclusively appropriated funds.

Table 1. Estimated Gross and Net Outlays for the Pandemic Assistance and Agricultural Disaster Assistance Programs Rule for FY 2023

Item	Gross Estimated Outlays in 2023	Net Estimated Outlays	Implementing Agency	Funding Source
Item 1—Emergency Relief Program (ERP) Phase 2	\$1.504 billion ^a	\$1.2 billion	FSA	Extending Government Funding and Delivering Emergency Assistance Act
Item 2—PARP	\$2.662 billion ^b	250 million	FSA	CAA
Item 3—15 Percent Top-Up for Underserved Recipients of CFAP 2 Payments.....	325 million	325 million	FSA	CCC net transfer except for the tobacco portion, which is from the CARES Act
Item 4—Recreational Animals and Livestock Disaster Programs	19.5 million	17.7 million	FSA	CCC
Item 5— Flexibility in NAP Enrollment for Underserved Producers ^d	4.3 million	4.3 million	FSA	CCC
Item 6—Notification of Interest Changes.....	3.7 million	3.7 million	FSA	CCC

Item 7—ECP and Public Lands	No change in cost	No change in cost	FSA	CCC
Item 8—ECP and EFRP and the Hermit’s Peak/Calf’s Canyon Fire ^c	24.2 million	22.5 million	FSA	Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023
Total.....	4.54 billion	1.82 billion		

^aThis estimate uses the 50-percent loss scenario. Note that both 2020 and 2021 losses are expected to be paid in FY 2023. The significant difference between gross and net outlays is because the targeted amount for ERP Phase 2 spending is \$1.2 billion.

^bThis estimate represents the most plausible scenario but, as discussed below, gross estimated outlays could be considerably higher. Note that the significant difference between gross and net outlays is because the targeted amount for PARP spending is \$250 million.

^cThe difference between the gross and net amount is due to adjusted gross income (AGI) considerations, payment limitations, and other reductions.

^dThis estimate uses the 20 percent increase-in-participation scenario.

Note: Benefits associated with items 4 through 7 continue in FY 2023 and in perpetuity in each FY beyond. Payments associated with Items 1, 2, 3, and 8 are assumed to be paid in FY 2023 and to not continue beyond.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

Although OMB has designated this rule as “economically significant” under Executive Order 12866, “... economic or social effects are not intended by themselves to require preparation of an environmental impact statement” when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)). The pandemic assistance and disaster assistance programs were designed to avoid skewing planting decisions. Producers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of what a new USDA program might look like.

This rule includes discretionary amendments for ECP and EFRP. Accordingly, the discretionary provisions of this action are covered by the Categorical Exclusion, in 7 CFR 799.31(b)(2)(iii) for minor amendments or revisions to previously approved actions and § 799.31(b)(3)(i), for the issuance of minor technical corrections to regulations.

The rule implements discretionary amendments for BCAP, CFAP, ELAP, LIP, LFP, NAP, and PARP. The discretionary aspects are to improve administration of the programs and clarify existing program requirements. The change to BCAP is a technical clarification and does not alter the impacts or alternatives previously considered in the BCAP Programmatic Environmental Impact Statement and Record of Decision dated June 2010. FSA is providing the disaster assistance under ELAP, LIP, LFP, and NAP to eligible producers. The discretionary provisions would not alter any environmental impacts resulting from implementing the mandatory changes to those programs. Accordingly, these discretionary aspects are covered by the following Categorical Exclusion: in 7 CFR 799.31(b)(6)(vi) safety net programs administered by FSA. ERP Phase 2 is a new regulation, which is a benefit program providing assistance after specific natural disasters; therefore, similar to the other programs discussed in this paragraph, ERP Phase 2 has similar discretionary aspects that are covered by the following Categorical Exclusion: in 7 CFR 799.31(b)(6)(vi) safety net programs administered by FSA.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances (§ 799.33) exist. Therefore, as this rule presents only discretionary amendments that will not have an impact to the human environments, individually or cumulatively, FSA will not prepare an environmental assessment or environmental impact statement for this rule; this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. For the payment eligibility regulation changes, payments will be adjusted retroactively, starting in January 2020, as discussed above in the Payment Eligibility section, above. For the ELAP regulation changes, payments will be made retroactively starting at January 1, 2021, as discussed in the Cost Benefit Analysis Summary section, above. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about pandemic assistance, agricultural disaster assistance, and other issues.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The titles and numbers of the Federal Domestic Assistance Programs found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.051—Commodity Loans and Loan Deficiency Payments

10.054—Emergency Conservation Program

10.069—Conservation Reserve Program

10.087—Biomass Crop Assistance Program

10.088—Livestock Indemnity Program

10.089—Livestock Forage Disaster Program

10.091—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

10.092—Tree Assistance Program

10.112—Price Loss Coverage

10.113—Agriculture Risk Coverage

10.130—Coronavirus Food Assistance Program 1

10.132—Coronavirus Food Assistance Program 2

10.143—Pandemic Assistance Revenue Program

10.451—Noninsured Assistance

10.912—Environmental Quality Incentives Program

10.917—Agricultural Management Assistance

10.964—Emergency Relief Program

Paperwork Reduction Act

As noted above, the regulations to implement the EFRP, ELAP, LIP, LFP, and NAP changes are exempt from PRA as specified in 7 U.S.C. 9091(c)(2)(B) and 16 U.S.C. 3846(b)(1).

For ECP and BCAP, there are no changes to the information collection activities approved by OMB under control number 0560-0082.

In accordance with the Paperwork Reduction Act of 1995, the PARP information collection activity was submitted to OMB for emergency approval. FSA will collect and evaluate the application and other required paperwork from the producers for PARP. The forms are described above in the PARP Application Process section. Following the 60-day public comment period provided by this rule, FSA intends to request 3-year OMB approval to cover the PARP information collection request.

Title: PARP.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: This information collection is required to support PARP information collection activities to provide payments to eligible producers who, with respect to their agricultural commodities, have been impacted by the effects of the COVID–19 pandemic. The information collection is necessary to evaluate the application and other required

paperwork for determining the producer's eligibility and assist in the producer's payment calculations. The forms are included in the request.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.51385 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 313,901.

Estimated Number of Responses per Respondent: 1.6550.

Estimated Total Annual Responses: 519,506.

Estimated Average Time per Response: 0.51385 hours.

Estimated Annual Burden on Respondents: 266,947 hours.

Also, FSA is requesting comments from all interested individuals and organizations on a new information collection associated with ERP Phase 1 and 2. The emergency request was approved for the ERP Phase 1 using OMB control number 0560-0309. The emergency request was approved for the ERP Phase 2 using temporary OMB control number. The ERP Phase 2 will be merged with the approved 0560-0309 information collection request. ERP is for the producers who suffered losses of crops, trees, bushes, and vines due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021. FSA needs to disburse the payments to the eligible producers to cover the losses of crops,

trees, bushes and vines, and the payments will seriously assist the producers not to consider making business decisions to lose the farm business.

Title: ERP Phase 2.

Type of Request: New.

Abstract: ERP is for the producers who suffered losses of crops, trees, bushes, and vines due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021. FSA needs to disburse the payments to the eligible producers to cover the losses of crops, trees, bushes and vines, and the payments will seriously assist the producers not to consider making business decisions to lose the farm business.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.54492 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 48,402.

Estimated Number of Responses per Respondent: 2.085.

Estimated Total Annual Responses: 100,918.

Estimated Average Time per Response: 0.54492 hours.

Estimated Annual Burden on Respondents: 54,992 hours.

Also, FSA is requesting comments from all interested individuals and organizations on a new information collection associated with CFAP 2. The emergency

request was approved under a temporary OMB control number and will merge with CFAP 2 under the OMB control number 0560-0297.

Title: CFAP 2.

Type of Request: New.

Abstract: This information collection is required to support CFAP 2 information collection activities to provide payments to eligible producers who, with respect to their agricultural commodities, have been impacted by the effects of the COVID-19 pandemic. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibility and assist in the producer's payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.0999 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 96,973.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 96,973.

Estimated Average Time per Response: 0.0999 hours.

Estimated Annual Burden on Respondents: 9,697 hours.

FSA is requesting comments on all aspects of this information collection to help FSA to:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign

Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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List of Subjects

7 CFR Part 9

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

7 CFR Part 701

Disaster assistance, Environmental protection, Forests and forest products, Grant programs—agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

7 CFR Part 1400

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Natural resources, Price support programs.

7 CFR Part 1416

Administrative practice and procedure, Agriculture, Disaster assistance, Fruits, Livestock, Nursery stock, Seafood.

7 CFR Part 1437

Acreage allotments, Agricultural commodities, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1450

Administrative practice and procedure, Agriculture, Energy, Environmental protection, Grant programs-agriculture, Natural resources, Reporting and recordkeeping requirements, Technical assistance

For the reasons discussed above, this final rule amends 7 CFR parts 9, 701, 760, 1400, 1416, 1437, and 1450 as follows:

PART 9 – PANDEMIC ASSISTANCE PROGRAMS

1. The authority citation for part 9 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; Division B, Title I, Pub. L. 116-136, 134 Stat. 505; and Division N, Title VII, Subtitle B, Chapter 1, Pub. L. 116-260.

2. Revise the heading for part 9 to read as set forth above.

Subpart A—CFAP General Provisions

3. Revise the heading for subpart A to read as set forth above.

§ 9.1 [Amended]

4. Amend § 9.1 as follows:

- a. In paragraph (a) introductory text, remove the words “This part specifies” and add “Subparts A through C of this part specify” in their place, and remove the words “payment made under this part” and add “CFAP payment” in their place;

- b. In paragraph (c), remove the words “this part” each time they appear and add “subparts A through C of this part” in their place; and

- c. In paragraph (d), remove words “the programs of this part” and add “CFAP” in their place.

5. Amend § 9.2 as follows:

a. In the introductory text, remove the words “this part” and add “subparts A through C of this part” in its place;

b. In the definition of “NOFA”, remove the words “under this part”; and

c. Add a definition for “Ownership interest” in alphabetical order.

The addition reads as follows:

§ 9.2 Definitions.

* * * * *

Ownership interest means to have either legal ownership interest or beneficial ownership interest in a legal entity. For the purposes of administering CFAP, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity, and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is also considered to have an ownership interest in such legal entity.

* * * * *

§ 9.3 [Amended]

6. Amend § 9.3 as follows:

a. In paragraph (a), remove the words “this part” and add “subparts A through C of this part” in their place; and

b. In paragraph (b)(2), remove the words “this part means” and add “subparts A through C of this part means” in its place.

7. Amend § 9.4 by adding paragraph (e) to read as follows:

§ 9.4 Time and method of application.

* * * * *

(e) To receive an additional payment under § 9.203(p), a producer must submit form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, with a certification applicable to the 2020 program year by the date announced by the Deputy Administrator.

8. Amend § 9.7 as follows:

a. In paragraphs (b), (c), (d), and (e)(2)(ii) and (iii), add the words “subparts A through C of” before the words “this part” each time they appear;

b. In paragraph (h), remove the words “This part applies” and add “Subparts A through C of this part apply” in their place; and

c. Add paragraph (i).

The addition reads as follows.

§ 9.7 Miscellaneous provisions.

* * * * *

(i) To be eligible to receive a CFAP payment and facilitate administration of paragraphs (d) and (e) of this section, a person or legal entity must provide their name, address, and taxpayer identification number to USDA. In addition, a legal entity must provide the name taxpayer identification number, address and ownership share of each person or legal entity that holds or acquires a direct or indirect ownership interest in the legal entity. CFAP payments to a legal entity will be reduced in proportion to a member’s ownership share when the taxpayer identification number for a person or legal entity that holds less than a 10 percent direct or indirect ownership interest at, or above, the fourth level of ownership in the business structure is not provided to USDA. Additionally, a legal entity will not be eligible to receive CFAP payments when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater, at or above the fourth level of ownership in the business structure, is not provided to USDA.

Subpart B—CFAP 1

§ 9.101 [Amended]

9. Amend § 9.101, in the definition of “All other cattle”, by removing the word “part” and adding “subpart” in its place.

10. Amend § 9.102 as follows:

a. In paragraph (c) introductory text, remove the word “two” and add “three” in its place;

b. In paragraph (c)(1), remove the word “and”;

c. In paragraph (c)(2), remove the period and add “; and” at the end of the paragraph;

d. Add paragraph (c)(3);

e. In paragraph (d) introductory text, remove the word “three” and add “two” in its place;

f. In paragraph (d)(1), add the word “and” at the end of the paragraph;

g. In paragraph (d)(2), remove “; and” and add a period in its place; and

h. Remove paragraph (d)(3).

The addition reads as follows.

§ 9.102 Calculation of payments.

* * * *

(c) * * *

(3) Cattle inventory owned between April 16, 2020, to May 14, 2020, multiplied by:

(i) \$14.75 for slaughter cattle—mature cattle;

(ii) \$63 for slaughter cattle—fed cattle;

(iii) \$7 for feeder cattle less than 600 pounds;

(iv) \$25.50 for feeder cattle 600 pounds or more; and

(v) \$17.25 for all other cattle.

* * * * *

Subpart C—CFAP 2

11. In § 9.201, add definitions for “Beginning farmer or rancher”, “Limited resource farmer or rancher”, “Socially disadvantaged farmer or rancher”, “Underserved farmer or rancher”, and “Veteran farmer or rancher” in alphabetical order to read as follows:

§ 9.201 Definitions.

* * * * *

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

* * * * *

Limited resource farmer or rancher means a farmer or rancher:

(1) Who is a person whose:

(i) Direct or indirect gross farm sales did not exceed \$180,300 in each calendar year for 2017 and 2018 (the relevant years for the 2020 program year); and

(ii) Total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1)(i) of this definition²⁴; or

(2) That is an entity and all members who hold an ownership interest in the entity meet the criteria in paragraph (1) of this definition.

* * * * *

²⁴Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through Natural Resources Conservation Service at <https://lrftool.sc.egov.usda.gov>.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives;
- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Hispanics or Hispanic Americans;
- (5) Native Hawaiians or other Pacific Islanders; and
- (6) Women.

* * * * *

Underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

* * * * *

Veteran farmer or rancher means a farmer or rancher:

- (1) Who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)²⁵) and:
 - (i) Has not operated a farm or ranch for more than 10 years; or
 - (ii) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)²⁶) during the most recent 10-year period; or

²⁵The term “Armed Forces” means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

²⁶The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

(2) That is an entity and at least 50 percent of the ownership interest is held by members who meet the criteria in paragraph (1) of this definition.

* * * * *

§ 9.202 [Amended]

12. Amend § 9.202 as follows:

a. In paragraph (a), remove the words “this part” and add the words “subpart A of this part and this subpart” in their place; and

b. In paragraphs (b)(4) and (d)(2), remove the words “this part” and add the words “subpart A of this part and this subpart” in their place.

13. Amend § 9.203 as follows:

a. Add paragraph (a)(5);

b. In paragraph (b), add a sentence at the end of the paragraph;

c. In paragraphs (f)(2) and (h)(2), remove the word “part” and add the word “subpart” in its place; and

d. Add paragraph (p).

The additions read as follows.

§ 9.203 Calculation of payments.

(a) * * *

(5) An additional payment will be issued for price trigger crops equal to the eligible acres of the crop multiplied by a payment rate of \$20 per acre.

(b) * * * An additional payment will be issued for flat-rate crops equal to the eligible acres of the crop multiplied by a payment rate of \$20 per acre.

* * * * *

(p) An additional payment equal to 15 percent of a producer’s CFAP 2 payment calculated according to paragraphs (a) through (k) of this section will be issued to producers who have certified their status as an underserved farmer or rancher, applicable

to the 2020 program year, on CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification.

14. Add subpart D, consisting of §§ 9.301 through 9.310, to read as follows:

Subpart D—Pandemic Assistance Revenue Program

Sec.

9.301 Applicability and administration.

9.302 Definitions.

9.303 Producer eligibility requirements.

9.304 Allowable gross revenue.

9.305 Time and method of application.

9.306 Payment calculation.

9.307 Adjusted gross income limitation, payment limitation, and attribution.

9.308 Eligibility subject to verification.

9.309 Miscellaneous provisions.

9.310 Perjury.

Subpart D—Pandemic Assistance Revenue Program

§ 9.301 Applicability and administration.

(a) This subpart specifies the eligibility requirements and payment calculations for the Pandemic Assistance Revenue Program (PARP). FSA is administering PARP to respond to the COVID-19 pandemic by providing support for eligible producers of agricultural commodities who suffered an eligible revenue loss in calendar year 2020 due to the COVID-19 pandemic. To be eligible for PARP payments, participants must comply with all provisions under this subpart.

(b) PARP is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).

(c) The FSA State committee will take any action required by this subpart that an FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this subpart;

or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this subpart, or from reversing or modifying any determination made by an FSA State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements or program provisions not specified in law, in cases where lateness or failure to meet such other requirements or program provisions do not adversely affect operation of PARP.

§ 9.302 Definitions.

The following definitions apply to this subpart. The definitions in part 1400 of this title apply, except where they conflict with the definitions in this section.

2017 WHIP means the 2017 Wildfires and Hurricanes Indemnity Program under 7 CFR part 760, subpart O.

Agricultural commodity means a crop, aquaculture, livestock, livestock byproduct, or other animal or animal byproduct that is produced as part of a farming operation and is intended to be commercially marketed. It includes only commodities produced in the United States, or produced outside the United States by a producer located in the United States and marketed inside the United States. It excludes:

- (1) Wild free-roaming animals;
- (2) Horses and other animals used or intended to be used for racing or wagering;
- (3) Aquatic species that do not meet the definition of aquaculture;
- (4) *Cannabis sativa* L. and any part of that plant that does not meet the definition of hemp; and

(5) Timber.

Applicable pandemic assistance includes payments received directly by an applicant under the following programs:

- (1) The Coronavirus Food Assistance Program (CFAP);
- (2) The Pandemic Livestock Indemnity Program (PLIP); and
- (3) The Spot Market Hog Pandemic Program (SMHPP).

Application means the PARP application form.

Aquaculture means any species of aquatic organisms grown as food for human or livestock consumption or for industrial or biomass uses, fish raised as feed for fish that are consumed by humans, and ornamental fish propagated and reared in an aquatic medium. Eligible aquacultural species must be raised by a commercial operator and in water in a controlled environment.

ARC and PLC means the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs under 7 CFR part 1412.

BCAP means the Biomass Crop Assistance Program under 7 CFR part 1450.

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

Cattle feeder operation means an operation that intensely feeds cattle on behalf of another person or entity for finishing purposes and is compensated based on feed, yardage, or weight gain of the cattle.

CCC means the Commodity Credit Corporation.

CFAP means the Coronavirus Food Assistance Program 1 and 2 under 7 CFR part 9, subparts A through C, excluding assistance for contract producers specified in § 9.203(l) through (o).

Contract producer means a producer who grows or produces an agricultural commodity under contract for or on behalf of another person or entity. The contract producer does not have ownership in the commodity and is not entitled to a share from sales proceeds of the commodity. The term “contract producer” does not include cattle feeder operations.

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media (including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

County means the county or parish of a state. For Alaska, Puerto Rico, and the Virgin Islands, a county is an area designated by the State committee with the concurrence of the Deputy Administrator.

County committee means the FSA county committee.

Crop insurance means an insurance policy reinsured by Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended, or a private plan of insurance.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture, or their designee.

DMC means the Dairy Margin Coverage Program under 7 CFR Part 1430, subpart D.

ELAP means the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program under 7 CFR part 1416, subpart B.

ERP means the Emergency Relief Program, which was administered in 2 phases:

(1) ERP Phase 1, administered according to the notice of funds availability published in the Federal Register on May 18, 2022 (87 FR 30164-30172) and the

clarification to the notice of funds availability that was published on August 18, 2022 (87 FR 50828-50830); and

- (2) ERP Phase 2, administered according to 7 CFR part 760, subpart S.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation, and that is eligible to receive payments, directly or indirectly, under this subpart. A person or legal entity may have more than one farming operation if the person or legal entity is a member of one or more legal entity or joint operation.

Foreign entity means a corporation, trust, estate, or other similar organization that has more than 10 percent of its beneficial interest held by individuals who are not:

- (1) Citizens of the United States; or
- (2) Lawful aliens possessing a valid Alien Registration Receipt Card.

Foreign person means any person who is not a citizen or national of the United States or who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Hemp means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, that is grown under a license or other required authorization issued by the applicable governing authority that permits the production of the hemp.

IRS means the Department of Treasury, Internal Revenue Service.

LDP means the Loan Deficiency Payment programs in 7 CFR parts 1421, 1425, 1427, 1434, and 1435.

Legal entity means a corporation, joint stock company, association, limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in a business structure as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization. A business operating as a sole proprietorship is considered a legal entity.

Limited resource farmer or rancher means a farmer or rancher:

(1) Who is a person whose:

(i) Direct or indirect gross farm sales did not exceed \$180,300 in each calendar year for 2017 and 2018 (the relevant years for the 2020 program year); and

(ii) Total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1)(i) of this definition¹; or

(2) That is an entity and all members who hold an ownership interest in the entity meet the criteria in paragraph (1) of this definition.

LFP means the Livestock Forage Disaster Program under CFR part 1416, subpart C.

LIP means the Livestock Indemnity Program under 7 CFR part 1416, subpart D.

Minor child means a person who is under 18 years of age as of June 1, 2020.

MFP means the 2018 Market Facilitation Program under 7 CFR part 1409, subpart A, and the 2019 Market Facilitation Program under 7 CFR part 1409, subpart B.

Milk Loss Program means the Milk Loss Program under 7 CFR part 760, subpart Q.

¹Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through Natural Resources Conservation Service at <https://lrftool.sc.egov.usda.gov>.

MLG means a marketing loan gain under the Marketing Assistance Loan programs in 7 CFR parts 1421, 1425, 1427, 1434, and 1435.

MPP-Dairy means the Margin Protection Program for Dairy under 7 CFR part 1430, subpart A.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and 7 CFR part 1437.

On-Farm Storage Loss Program means the On-Farm Storage Loss Program under 7 CFR part 760, subpart P.

Ownership interest means to have either legal ownership interest or beneficial ownership interest in a legal entity. For the purposes of administering PARP, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity where members hold a legal ownership interest and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is also considered to have a beneficial ownership interest in such legal entity.

Person means an individual, natural person and does not include a legal entity.

PLIP means the Pandemic Livestock Indemnity Program announced in the notice of funds availability published on July 19, 2021 (86 FR 37990-37994).

PMVAP means the Pandemic Market Volatility Assistance Program administered by USDA's Agricultural Marketing Service.

Producer means a person or legal entity who was in the business of farming to produce an agricultural commodity in calendar year 2020, and who was entitled to a share in the agricultural commodity available for marketing or would have shared had the

agricultural commodity been produced and marketed. For PARP, “producer” also includes cattle feeder operations.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives;
- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Hispanics or Hispanic Americans;
- (5) Native Hawaiians or other Pacific Islanders; and
- (6) Women.

TAP means the Tree Assistance Program under 7 CFR part 1416, subpart E.

SMHPP means the Spot Market Hog Pandemic Program announced in the notice of funds availability published on December 14, 2021 (86 FR 71003-71007).

STRP means the Seafood Trade Relief Program announced in the notice of funds availability published on September 14, 2020 (85 FR 56572-56575).

Underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Veteran farmer or rancher means a farmer or rancher:

(1) Who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)²) and:

(i) Has not operated a farm or ranch for more than 10 years; or

(ii) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)³) during the most recent 10-year period; or

(2) That is an entity and at least 50 percent of the ownership interest is held by members who meet the criteria in paragraph (1) of this definition.

WHIP+ means the Wildfires and Hurricanes Indemnity Program Plus under 7 CFR part 760, subpart O.

§ 9.303 Producer eligibility requirements.

(a) To be eligible for PARP, a producer must:

(1) Have been in the business of farming in the 2020 calendar year;

(2) Have had at least a 15 percent decrease in allowable gross revenue for the 2020 calendar year, as compared to the:

(i) Actual allowable gross revenue for the 2018 or 2019 calendar year, whichever is reflective of a typical year, as elected by the producer, if the producer had allowable gross revenue in the 2018 or 2019 calendar year; or

(ii) Producer's expected allowable gross revenue for the 2020 calendar year, if the producer had no allowable gross revenue for the 2018 and 2019 calendar years; and

(3) Meet all other requirements for eligibility under this subpart.

(b) To be eligible for a PARP payment, a producer must be a:

(1) Citizen of the United States;

²The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

³The term "veteran" means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

(2) Resident alien, which for purposes of this subpart means “lawful alien” as defined in part 1400 of this title;

(3) Partnership organized under State Law;

(4) Corporation, limited liability company, or other organizational structure organized under State law;

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or

(6) Foreign person or foreign entity who meets all requirements as described in 7 CFR part 1400.

§ 9.304 Allowable gross revenue.

(a) For the purposes of this subpart, “allowable gross revenue” includes revenue from:

(1) Sales of agricultural commodities produced by the producer, including sales resulting from value added through post-production activities;

(2) Sales of agricultural commodities a producer purchased for resale that had a change in characteristic due to the time held (for example, a plant purchased at a size of 2 inches and sold as an 18-inch plant after 4 months), less the cost or other basis of such commodities;

(3) The taxable amount of cooperative distributions directly related to the sale of the agricultural commodities produced by the producer;

(4) Benefits under the following agricultural programs: ARC and PLC, BCAP, DMC, LDP, MFP, MLG, and MPP-Dairy;

(5) CCC loans, if treated as income and reported to IRS;

(6) Crop insurance proceeds;

(7) Federal disaster program payments under the following programs: 2017 WHIP, ELAP, LFP, LIP, NAP, Milk Loss Program, On-Farm Storage Loss Program, STRP, TAP, and WHIP+;

(8) Payments issued through grant agreements with FSA for losses of agricultural commodities;

(9) Grants from the Department of Commerce, National Oceanic and Atmospheric Administration and State program funds providing direct payments for the loss of agricultural commodities or the loss of revenue from agricultural commodities;

(10) Revenue from raised breeding livestock;

(11) Revenue earned as a cattle feeder operation;

(12) Other revenue directly related to the production of agricultural commodities that IRS requires the producer to report as income and

(13) For 2020 allowable gross revenue, payments PMVAP regardless of the calendar year in which the payment was received.

(b) Allowable gross revenue does not include revenue from sources other than those listed in paragraph (a) of this section, including but not limited to, revenue from:

(1) Applicable pandemic assistance;

(2) Sales of commodities that are excluded from “agricultural commodities,”

(3) Resale items not held for characteristic change;

(4) Income from a pass-through entity such as an S Corp or limited liability company;

(5) Conservation program payments;

(6) Any pandemic assistance payments that were not intended to compensate for the loss of agricultural commodities or the loss of revenue from agricultural commodities due to the pandemic (for example, payments to provide assistance with the cost of purchasing personal protective equipment, retrofitting facilities for worker and consumer

safety, shifting to online sales platforms, transportation, worker housing, or medical costs);

- (7) Custom hire income;
- (8) Net gain from hedging or speculation;
- (9) Wages, salaries, tips, and cash rent;
- (10) Rental of equipment or supplies; and
- (11) Acting as a contract producer of an agricultural commodity.

(c) If a producer did not have a full year of revenue for 2018 or 2019, or increased their production capacity in 2020 compared to 2018 or 2019, the producer may certify to an adjusted 2018 or 2019 allowable gross revenue on form FSA-1122A.

Increases in production capacity do not include changes due to crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or increasing the rate of fertilizers or chemicals. Documentation required to support such an adjustment must be provided within 30 calendar days of submitting their PARP application and demonstrate that the producer:

- (1) Had the production capacity to support the expected full year revenue;
- (2) Added production capacity to the farming operation;
- (3) Increased the use of existing production capacity; or
- (4) Made physical alterations to existing production capacity.

(d) If a producer did not have allowable gross revenue in 2018 and 2019, the producer must certify on form FSA-1122A as to what had been their reasonably expected 2020 allowable gross revenue prior to the impact of the COVID-19 pandemic.

Documentation required to support the producer's certification must be provided within 30 calendar days of submitting the producer's PARP application. Acceptable documentation must be generated in the ordinary course of business and dated prior to the impact of the COVID-19 pandemic and includes, but is not limited to:

(1) Financial documents such as a business plan or cash flow statement that demonstrate an expected level of revenue;

(2) Sales contracts or purchase agreements; and

(3) Documentation supporting production capacity, use of existing production capacity, or physical alterations that demonstrate production capacity.

(e) A producer who does not provide acceptable documentation described in paragraph (c) or (d) of this section within 30 calendar days of submitting their application is not eligible for an adjustment to their 2019 allowable gross revenue or to have their payment calculated using an expected 2020 allowable gross revenue, as applicable.

(f) Except as provided in paragraph (a)(13) of this section, the allowable gross revenue for a specific calendar year will be based on the calendar year in which that revenue was received by the producer.

(g) Producers who file or would file a joint tax return will certify their allowable gross revenue based on what it would have been had they filed taxes separately for the applicable year.

§ 9.305 Time and method of application.

(a) A completed PARP application under this subpart must be submitted to any FSA county office by the close of business on the date announced by the Deputy Administrator. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60 days from the PARP application deadline, may result in no payment or a reduced payment:

(1) Form AD-2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;

(2) Form FSA-1122A, PARP Application, if applicable;

(3) Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, if applicable;

(4) Form CCC-901, Member Information for Legal Entities, if applicable;

(5) Form CCC-902 Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;

(6) Form CCC-941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information, for the 2020 program year for the person or legal entity, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400;

(7) Form FSA-1123, Certification of 2020 Adjusted Gross Income (AGI), if applicable; and

(8) Form AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification, for the PARP applicant and applicable affiliates as provided in 7 CFR part 12.

(c) If requested by USDA, the producer must provide additional documentation that establishes the producer's eligibility for PARP. If supporting documentation is requested, the documentation must be submitted to USDA within 30 calendar days from the request or the application will be disapproved by USDA. FSA may request supporting documentation to verify information provided by the producer and their eligibility including, but not limited to, the producer's:

(1) Allowable gross revenue reported on the PARP application; and

(2) Ownership share in the agricultural commodities.

§ 9.306 Payment calculation.

(a) If the producer's allowable gross revenue for 2020 decreased by at least 15 percent compared to the producer's allowable gross revenue for 2018 or 2019, as elected by the producer:

(1) FSA will calculate:

(i) The producer's 2018 or 2019 allowable gross revenue, as elected by the producer and as adjusted according to § 9.304(c), if applicable; minus

(ii) The producer's 2020 allowable gross revenue; multiplied by

(iii) A payment factor of:

(A) Ninety (90) percent for underserved farmers or ranchers, who have submitted form CCC-860 certifying they meet the definition for at least one of the applicable groups; or

(B) Eighty (80) percent for all other producers; and

(2) The producer's PARP payment will be equal to the result of the calculation in paragraph (a)(1) of this section minus the producer's applicable pandemic assistance, and 2020 program year ERP payments.

(b) If a producer did not have allowable gross revenue in 2018 and 2019 and the producer's allowable gross revenue for 2020 decreased by at least 15 percent compared to the producer's expected 2020 allowable gross revenue:

(1) FSA will calculate:

(i) The producer's expected 2020 allowable gross revenue, as specified in § 9.304(d), minus

(ii) The producer's actual 2020 allowable gross revenue;

(iii) Multiplied by a payment factor of:

(A) 90 percent for underserved farmers or ranchers who have submitted form CCC-860 certifying they meet the definition for at least one of the applicable groups; or

(B) 80 percent for all other producers; and

(2) The producer's PARP payment will be equal to the result of the calculation in paragraph (b)(1) of this section minus the producer's applicable pandemic assistance, and 2020 program year ERP payments.

(c) If a producer receives assistance through 2020 program year ERP or any program included under applicable pandemic assistance after their PARP payment is calculated, their PARP payment will be recalculated and the producer must refund any resulting overpayment.

(d) Payments calculated according to this section are subject to the availability of funds and may be factored if total calculated payments exceed the available funding.

§ 9.307 Adjusted gross income limitation, payment limitation, and attribution.

(a) To be eligible to receive a PARP payment and facilitate administration of paragraphs (b) through (f) of this section, a person or legal entity must provide their name, address, valid taxpayer identification number, and ownership share to USDA. In addition, a legal entity must provide the name, address, valid taxpayer identification number, and ownership share of each person or legal entity, that holds or acquires a direct or indirect ownership interest in the legal entity. PARP payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds less than a 10 percent direct or indirect ownership interest, at or above the fourth level of ownership in the business structure, is not provided to USDA. Additionally, a legal entity will not be eligible to receive PARP payments when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater, at or above the fourth level of ownership in the business structure, is not provided to USDA.

(b) The \$900,000 average adjusted gross income limitation provisions in 7 CFR part 1400 relating to limits on income for persons or legal entities, including members of legal entities, joint ventures, and general partnerships applies to PARP. The average adjusted gross income will be calculated for a person or legal entity based on the 2016, 2017, and 2018 tax years. If the person's or legal entity's average adjusted gross income

exceeds \$900,000, the applicant is ineligible for PARP except as provided in paragraph (c) of this section.

(c) A person or legal entity that does not meet the average adjusted gross income requirements described in paragraph (b) of this section, may otherwise meet the adjusted gross income requirements, provided the person's or legal entity's 2020 adjusted gross income, as defined under 26 U.S.C. 62 or comparable measure, is not more than \$900,000. Except for general partnerships and joint ventures, a PARP applicant that is a person or legal entity, including members holding an ownership interest in the legal entity, is required to:

(1) Certify, on a form that is approved for that purpose by the Deputy Administrator, that their 2020 adjusted gross income or comparable measure is not more than \$900,000; and

(2) Submit a certification from a licensed CPA or attorney affirming the person's or legal entity's 2020 adjusted gross income is not more than \$900,000.

(d) Members of general partnerships and joint ventures not meeting the income requirements described in paragraph (b) of this section may otherwise meet the income requirements, provided the member's 2020 adjusted gross income, as defined under 26 U.S.C. 62 or comparable measure, is not more than \$900,000. The member is required to provide the information described in paragraphs (c)(1) and (2) of this section.

(e) A person or legal entity other than a joint venture or general partnership cannot receive, directly or indirectly, more than \$125,000 under PARP. USDA may establish a lower maximum payment amount per person, legal entity, or member of a joint venture or general partnership after the application period has ended if calculated payment amounts exceed available funding. Payments made to a PARP applicant who is a joint operation, including a joint venture or a general partnership, may not exceed the amount determined by multiplying \$125,000 (or the reduced maximum payment

limitation, if applicable) by the number of persons or legal entities that comprise the first-level membership of the joint operation.

(f) A PARP payment made to a legal entity will be considered in combination with other PARP payments attributed to every person or legal entity with a direct or indirect ownership interest in the legal entity. The maximum limitation described in paragraph (e) of this section for a legal entity is determined based on payments to the legal entity and members who are an individual person or a legal entity. If a member's combined PARP payments reach the maximum payment limitation when summed from all businesses in which the person or legal entity has an ownership interest, then subsequent payments to the legal entity will be reduced by the proportionate ownership interest of the member. A payment to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility. Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership: Any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-level or payment legal entity;

(2) Second level of ownership: Any payment made to a first-level legal entity that is owned in whole or in part by another legal entity (referred to as a second-level legal entity) will be attributed to the second-level legal entity in proportion to the ownership of the second-level legal entity in the first-level legal entity; if the second-level legal entity is owned in whole or in part by a person, the amount of the payment made to the first-level legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-level legal entity by the person;

(3) Third and fourth levels of ownership: Except as provided in the second-level ownership in paragraph (f)(2) of this section and in the fourth level of ownership in paragraph (f)(4) of this section, any payments made to a legal entity at the third and fourth levels of ownership will be attributed in the same manner as specified in paragraph (f)(2) of this section; and

(4) Fourth-level of ownership: If the fourth level of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-level or payment legal entity in the amount that represents the indirect ownership in the first level or payment legal entity by the fourth-level legal entity.

(g) Payments made to a PARP applicant that is an Indian Tribe or Tribal organization, as defined in the section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), are not subject to:

(1) AGI requirements described in paragraphs (b) through (d) of this section;

(2) Payment limitation described in paragraph (e) of this section; and

(3) Attribution of payments described in paragraph (f) of this section.

(h) Payments made directly or indirectly to a person who is a minor child will not be combined with the earnings of the minor child's parent or legal guardian.

§ 9.308 Eligibility subject to verification.

(a) Producers who are approved for participation in PARP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving PARP payments must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

§ 9.309 Miscellaneous provisions.

(a) If a PARP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment with interest calculated from the date of the disbursement of the payment.

(b) If FSA determines that the producer intentionally misrepresented information provided on their application, the application will be disapproved and the producer must refund the full payment to FSA with interest from the date of disbursement.

(c) Any required refunds must be resolved in accordance with part 3 of this title.

(d) The regulations in 7 CFR part 718, subpart D, and 7 CFR parts 11 and 780 apply to determinations made under this subpart.

(e) A producer, whether a person or legal entity that either fails to timely provide all required documentation or fails to satisfy any eligibility requirement for PARP, is not eligible to receive PARP payments, directly or indirectly. A PARP payment to an eligible legal entity applicant whose member(s) either fails to timely provide all required documentation or fails to satisfy any eligibility requirement for PARP will be reduced proportionate to that member's ownership interest in the legal entity.

(f) Any payment under this subpart will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title do not apply to payments made under this subpart.

(g) For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under PARP but only as to beneficiaries who, as a condition of the waiver, agree to apply the PARP payments to reduce the amount of the judgment lien.

(h) The provisions in 7 CFR 718.3, 718.4, 718.5, 718.6, 718.8, 718.9, 718.10, and 718.11 are applicable to multiple programs and apply to PARP.

(i) In addition to any other Federal laws that apply to PARP, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, and 1001.

§ 9.310 Perjury.

In either applying for or participating in PARP, or both, the producer is subject to laws against perjury and any resulting penalties and prosecution, including, but not limited to, 18 U.S.C. 1621. If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in PARP, or both, then the producer may be guilty of perjury and, except as otherwise provided by law, may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

PART 701—EMERGENCY CONSERVATION PROGRAM, EMERGENCY FOREST RESTORATION PROGRAM, AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

15. The authority citation for part 701 continues to read as follows:

Authority: 16 U.S.C. 2201-2206; Sec. 101, Pub. L. 109-148, 119 Stat. 2747; and Pub. L. 111-212, 124 Stat. 2302.

Subpart A – General

16. Amend § 701.2 in paragraph (b) as follows:

- a. Remove the definition of “Commercial forest land”;
- b. Add the definition of “Forestland” in alphabetical order;
- c. In a definition for “Nonindustrial private forest land”, remove the words “commercial forest”; and
- d. Add a definition for “Socially disadvantaged farmer or rancher” in alphabetical order.

The additions read as follows:

§ 701.2 Abbreviations and definitions.

* * * * *

(b) * * *

Forestland means land that is at least 120 feet wide and 1 acre in size and at least 10 percent covered by live trees of any size.

* * * * *

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group. A socially disadvantaged group is a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

§§ 701.44 and 701.45 [Removed and Reserved]

17. Remove and reserve §§ 701.44 and 701.45.

Subpart B – Emergency Conservation Program

18. Amend § 701.105 as follows:

a. Remove paragraphs (b)(1) and (2);

b. Redesignate paragraphs (b)(3) through (13) as paragraphs (b)(1) through (11), respectively;

c. Add paragraph (d).

The addition reads as set forth below.

§ 701.105 Land eligibility.

* * * * *

(d) Additional provisions making Government-owned land eligible is specified in § 701.106.

19. Add § 701.106 to read as follows:

§ 701.106 Government-owned land.

(a) *State-owned land.* When land is owned by a State, whether it is eligible for cost share is as specified in this paragraph (a) in addition to the requirements in § 701.105.

(1) If an eligible person or legal entity has a lease for the State-owned land that allows cost share, and files a cost share request for the State-owned land, the land is eligible for cost share if, as determined by FSA, the:

- (i) Eligible person or legal entity will directly benefit from the practice; or
- (ii) The land will remain in agricultural production throughout the established practice life span.

(2) If an eligible person or legal entity files a cost-share request for State-owned land, the land is ineligible for cost share if, as determined by FSA, the:

- (i) Practice is for the primary benefit of the State or State agencies; or
- (ii) Eligible person or legal entity is prohibited by the lease from accepting cost-share.

(b) *Federally-owned farmland.* When land is federally owned, whether it is eligible for cost-share is as specified in this paragraph (a), in addition to the requirements in § 701.105.

(1) If an eligible person or legal entity files a cost-share request on federally owned farmland, the land is eligible if all of the following apply:

- (i) An eligible private person or legal entity is farming or ranching the farmland;
- (ii) An eligible person or legal entity has a lease that does not prohibit cost-share;
- (iii) The practice will primarily benefit nearby or adjacent privately owned farmland of the eligible person or legal entity performing the practice;

(iv) A person or legal entity performing the practice has authorization from a Federal agency to install and maintain the practice;

(v) The Federal land is the most practical location for the eligible practice; and

(vi) During a drought, the practice will primarily benefit the livestock owned or managed by the eligible person or legal entity performing the practice.

(2) If an eligible person or legal entity files a cost share request on federally-owned land, the land is ineligible if the practices performed on these lands are for the benefit of land owned by a Federal agency.

(c) *Federal or State agency.* For the purposes of this subpart, private persons or legal entities exclude Federal and State agencies.

20. Amend § 701.111 by revising paragraph (a) to read as follows:

§ 701.111 Prohibition on duplicate payments.

(a) *Duplicate payments.* Participants are not eligible to receive funding under ECP on the same piece of land for which the participant has or will receive funding under any other Federal or State program that covers the same or similar expenses so as to create duplicate payments, or, in effect, a higher rate of cost share than is allowed under this part.

* * * * *

21. Amend § 701.126 by adding paragraph (d) to read as follows.

§ 701.126 Maximum cost-share percentages.

* * * * *

(d) The Secretary may waive the maximum limitations described in paragraphs (a) through (c) of this section to the maximum extent allowed by law.

22. Amend § 701.127 by designating the undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows.

§ 701.127 Maximum ECP payments per person or legal entity.

* * * * *

(b) The Secretary may waive the maximum limitations described in paragraph (a) of this section to the maximum extent allowed by law.

23. Amend § 701.128 by revising the section heading and paragraph (a) to read as follows.

§ 701.128 Advance payment.

(a) With respect to a payment to an agricultural producer for any eligible ECP practice, the agricultural producer has the option of receiving up to 25 percent of the projected payment, determined based on the applicable percentage of the fair market value of the cost of the practice, as determined by FSA, before the agricultural producer carries out the restoration.

* * * * *

§§ 701.150 through 701.157 [Removed]

25. Remove §§ 701.150 through 701.157.

Subpart C - Emergency Forest Restoration Program

26. Amend § 701.226 by adding paragraph (c) to read as follows.

§ 701.226 Maximum cost-share percentages.

* * * * *

(c) The Secretary may waive the maximum limitations described in paragraphs (a) and (b) of this section to the maximum extent allowed by law.

Farm Service Administration

Chapter VII

PART 760 - INDEMNITY PAYMENT PROGRAMS

27. The authority citation for part 760 is revised to read as follows:

Authority: 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109-234, 120 Stat. 474; Title IX, Pub. L. 110-28, 121 Stat. 211; Sec. 748,

Pub. L. 111-80, 123 Stat. 2131; Title I, Pub. L. 115-123, 132 Stat. 65; Title I, Pub. L. 116-20, 133 Stat. 871; Division B, Title VII, Pub. L. 116-94, 133 Stat. 2658; and Division B, Title I, Pub. L. 117-43, 135 Stat. 344.

28. Add subpart S to read as follows.

Subpart S—Emergency Relief Program

Sec.

760.1900 Applicability and administration.

760.1901 Definitions.

760.1902 Producer eligibility requirements.

760.1903 Allowable gross revenue.

760.1904 Time and method of application.

760.1905 Payment calculation.

760.1906 Payment limitation and attribution.

760.1907 Eligibility subject to verification.

760.1908 Miscellaneous provisions.

760.1909 Perjury.

760.1910 Requirement to purchase crop insurance or NAP coverage.

Subpart S—Emergency Relief Program

§ 760.1900 Applicability and administration.

(a) This subpart specifies the eligibility requirements and payment calculations for Phase 2 of the Emergency Relief Program (ERP). ERP provides payments to producers who suffered eligible crop losses due to qualifying disaster events, which include wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in calendar years 2020 and 2021.¹ To be eligible for ERP Phase 2 payments, participants must comply with all provisions under this subpart.

(b) ERP is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).

(c) The FSA State committee will take any action required by this subpart that an FSA county committee has not taken. The FSA State committee will also:

¹ERP Phase 1 was administered according to the notice of funds availability published in the Federal Register on May 18, 2022 (87 FR 30164-30172). A clarification to the notice of funds availability for ERP Phase 1 was published on August 18, 2022 (87 FR 50828-50830).

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this subpart; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this subpart, or from reversing or modifying any determination made by an FSA State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements or program provisions not specified in law, in cases where lateness or failure to meet such other requirements or program provisions do not adversely affect operation of ERP.

§ 760.1901 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title apply, except where they conflict with the definitions in this section.

2017 WHIP means the 2017 Wildfires and Hurricanes Indemnity Program under 7 CFR part 760, subpart O.

Administrative fee means the amount an insured producer paid for catastrophic risk protection, and additional coverage for each crop year as specified in the applicable crop insurance policy.

Application means the ERP Phase 2 application form.

Aquaculture means any species of aquatic organisms grown as food for human or livestock consumption or for industrial or biomass uses, fish raised as feed for fish that are consumed by humans, and ornamental fish propagated and reared in an aquatic

medium. Eligible aquacultural species must be raised by a commercial operator and in water in a controlled environment.

ARC and PLC means the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs under 7 CFR part 1412.

Average adjusted gross farm income means the average of the person or legal entity's adjusted gross income derived from farming, ranching, or forestry operations for the 3 taxable years preceding the most immediately preceding complete taxable year.

(1) If the resulting average adjusted gross farm income is at least 66.66 percent of the average adjusted gross income of the person or legal entity, then the average adjusted gross farm income may also take into consideration income or benefits derived from the following:

(i) The sale of equipment to conduct farm, ranch, or forestry operations; and
(ii) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

(2) The relevant tax years are:

(i) For the 2020 program year, 2016, 2017, and 2018; and
(ii) For the 2021 program year, 2017, 2018, and 2019.

Average adjusted gross income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity. The relevant tax years are:

(1) For the 2020 program year, 2016, 2017, and 2018; and
(2) For the 2021 program year, 2017, 2018, and 2019.

BCAP means the Biomass Crop Assistance Program under 7 CFR part 1450.

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in

the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

Benchmark revenue means allowable gross revenue for the benchmark year. If a producer began farming in 2020 or 2021 and did not have allowable gross revenue in either 2018 or 2019, the benchmark revenue is the producer's reasonably expected allowable gross revenue for the disaster year prior to the impact of the qualifying disaster event.

Benchmark year means the 2018 or 2019 tax year, as elected by the producer.

Buy-up NAP coverage means NAP coverage at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Catastrophic coverage has the same meaning as in 7 CFR 1437.3.

CCC means the Commodity Credit Corporation.

Certifying agent means a private or governmental entity accredited by the USDA Secretary for the purpose of certifying a production, processing, or handling operation as organic.

CFAP means the Coronavirus Food Assistance Program 1 and 2 under 7 CFR part 9, subparts A through C, excluding assistance for contract producers specified in § 9.203(l) through (o).

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media (including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

County means the county or parish of a state. For Alaska, Puerto Rico, and the Virgin Islands, a county is an area designated by the State committee with the concurrence of the Deputy Administrator.

County committee means the FSA county committee.

Coverage level means the percentage determined by multiplying the elected yield percentage under a crop insurance policy or NAP coverage by the elected price percentage.

Crop insurance means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

Crop insurance indemnity means the payment to a participant for crop losses covered under crop insurance administered by RMA in accordance with the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture, or their designee.

Direct market crop means a crop sold directly to consumers without the intervention of an intermediary such as a registered handler, wholesaler, retailer, packer, processor, shipper, or buyer (for example, a crop sold at a farmer's market or roadside stand), excluding crops sold for livestock consumption.

Disaster year means the calendar year in which the qualifying disaster event occurred (that is, 2020 or 2021).

Disaster year revenue means the allowable gross revenue for:

(1) The 2020 or 2021 tax year, as elected by the producer, for the 2020 disaster year; and

(2) The 2021 or 2022 tax year, as elected by the producer, for the 2021 disaster year.

(3) Producers must choose consecutive tax years if they are applying for both the 2020 and 2021 disaster years (that is, they may choose 2020 tax year revenue for the 2020 disaster year, and 2021 tax year revenue for the 2021 disaster year; or they may choose 2021 tax year revenue for the 2020 disaster year, and 2022 tax year revenue for the 2021 disaster year).

ELAP means the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program under part 1416, subpart B, of this title.

Eligible crop means a crop, including eligible aquaculture, that is produced in the United States as part of a farming operation and is intended to be commercially marketed.

It excludes:

- (1) Crops for grazing;
- (2) Aquatic species that do not meet the definition of aquaculture;
- (3) *Cannabis sativa* L. and any part of that plant that does not meet the definition of hemp; and
- (4) Timber.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation, and that is eligible to receive payments, directly or indirectly, under this subpart. A person or legal entity may have more than one farming operation if the person or legal entity is a member of one or more legal entity or joint operation.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA, administered by RMA.

Hemp means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, that is grown under a

license or other required authorization issued by the applicable governing authority that permits the production of the hemp.

High value crop means:

(1) Any eligible crop not specifically identified as a specialty crop or listed in the definition of “other crop”; and

(2) Any eligible crop, regardless of whether it is identified as a specialty crop or listed in the definition of “other crop,” if the crop is a direct market crop, organic crop, or a crop grown for a specific market in which specialized products can be sold resulting in an increased value compared to the typical market for the crops (for example, soybeans intended for tofu production), as determined by the Deputy Administrator.

Income derived from farming, ranching, and forestry operations means income of an individual or entity derived from:

(1) Production of crops, specialty crops, and unfinished raw forestry products;

(2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;

(3) Production of farm-based renewable energy;

(4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;

(5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;

(6) Processing, packing, storing, and transportation of farm, ranch, forestry commodities including renewable energy;

(7) Feeding, rearing, or finishing of livestock;

(8) Payments of benefits, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(9) Sale of land that has been used for agricultural purposes;

(10) Payments and benefits authorized under any program made available and applicable to payment eligibility and payment limitation rules;

(11) Income reported on Internal Revenue Service (IRS) Schedule F or other schedule used by the person or legal entity to report income from such operations to the IRS;

(12) Wages or dividends received from a closely held corporation, Interest Charge Domestic International Sales Corporation (IC-DISC), or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, or forestry activities as defined in this document; and

(13) Any other activity related to farming, ranching, and forestry, as determined by the Deputy Administrator.

IRS means the Department of Treasury, Internal Revenue Service.

LDP means the Loan Deficiency Payment programs in 7 CFR parts 1421, 1425, 1427, 1434, and 1435.

Legal entity means a corporation, joint stock company, association, limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in a business structure as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization. A business operating as a sole proprietorship is considered a legal entity.

Limited resource farmer or rancher means a farmer or rancher:

(1) Who is a person whose:

(i) Direct or indirect gross farm sales did not exceed:

(A) \$180,300 in each calendar year for 2017 and 2018 (the relevant years for the 2020 program year); or

(B) \$179,000 in each of the 2018 and 2019 calendar years for the 2021 program year;

and

(ii) Total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1)(i) of this definition¹; or

(2) That is an entity and all members who hold an ownership interest in the entity meet the criteria in paragraph (1) of this definition.

LFP means the Livestock Forage Disaster Program under CFR part 1416, subpart C.

MLG means marketing loan gains under the Marketing Assistance Loan program provisions in 7 CFR parts 1421, 1425, 1427, 1434, and 1435.

Minor child means a person who is under 18 years of age as of June 1, 2020.

MFP means the 2018 Market Facilitation Program under 7 CFR part 1409, subpart A, and the 2019 Market Facilitation Program under 7 CFR part 1409, subpart B.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and 7 CFR part 1437.

On-Farm Storage Loss Program means the On-Farm Storage Loss Program under 7 CFR part 760, subpart P.

Organic crop means a crop that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and grown on acreage certified by a certifying agent as conforming to organic standards specified in 7 CFR part 205.

¹Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through Natural Resources Conservation Service at <https://lrftool.sc.egov.usda.gov>.

Other crop means cotton, peanuts, rice, feedstock, and any crop grown with an intended use of grain, silage, or forage, unless the crop meets the requirements in paragraph (2) of the definition of “high value crop.”

Ownership interest means to have either legal ownership interest or beneficial ownership interest in a legal entity. For the purposes of administering ERP Phase 2, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity where members hold a legal ownership interest and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is also considered to have a beneficial ownership interest in such legal entity.

Person means an individual, natural person and does not include a legal entity.

Premium means the premium paid by the producer for crop insurance coverage or NAP buy-up coverage levels.

Producer means a person or legal entity who was entitled to a share in the eligible crop available for marketing or would have shared had the eligible crop been produced and marketed.

Program year means:

- (1) For ERP Phase 2, the disaster year; and
- (2) For all other programs, the program year as defined in the applicable program provisions.

Qualifying disaster event means wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions.

Qualifying drought means an area within the county was rated by the U.S. Drought Monitor as having a drought intensity of D2 (severe drought) for eight

consecutive weeks or D3 (extreme drought) or higher level for any period of time during the applicable calendar year.

Related condition means damaging weather and adverse natural occurrences that occurred concurrently with and as a direct result of a specified qualifying disaster event.

Related conditions include, but are not limited to:

- (1) Excessive wind that occurred as a direct result of a derecho;
- (2) Silt and debris that occurred as a direct and proximate result of flooding;
- (3) Excessive wind, storm surges, tornados, tropical storms, and tropical depressions that occurred as a direct result of a hurricane; and
- (4) Excessive wind and blizzards that occurred as a direct result of a winter storm.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives;
- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Hispanics or Hispanic Americans;
- (5) Native Hawaiians or other Pacific Islanders; and
- (6) Women.

Specialty crops means fruits, tree nuts, vegetables, culinary herbs and spices, medicinal plants, and nursery, floriculture, and horticulture crops. This includes common

specialty crops identified by USDA’s Agricultural Marketing Service at <https://www.ams.usda.gov/services/grants/scbgp/specialty-crop> and other crops as designated by the Deputy Administrator.

Substantial beneficial interest (SBI) has the same meaning as specified in the applicable crop insurance policy. For the purposes of ERP Phase 1, Federal crop insurance records for “transfer of coverage, right to indemnity” are considered the same as SBIs.

STRP means the Seafood Trade Relief Program announced in the notice of funds availability published on September 14, 2020 (85 FR 56572-56575).

Underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

U.S. Drought Monitor means the system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://droughtmonitor.unl.edu>.

Veteran farmer or rancher means a farmer or rancher:

- (1) Who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)²) and:
 - (i) Has not operated a farm or ranch for more than 10 years; or

²The term “Armed Forces” means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

(ii) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)³) during the most recent 10-year period; or

(2) That is an entity and at least 50 percent of the ownership interest is held by members who meet the criteria in paragraph (1) of this definition.

WHIP+ means the Wildfires and Hurricanes Indemnity Program Plus under 7 CFR part 760, subpart O.

§ 760.1902 Producer eligibility requirements.

(a) To be eligible for ERP Phase 2, a producer must have suffered a loss in disaster year allowable gross revenue, as compared to the benchmark allowable gross revenue, due to necessary expenses associated with losses of eligible crops due in whole or in part to a qualifying disaster event that occurred in the 2020 or 2021 calendar year.

(b) To be eligible for an ERP Phase 2 payment, a producer must be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of this subpart means “lawful alien” as defined in part 1400 of this title;

(3) Partnership organized under State Law;

(4) Corporation, limited liability company, or other organizational structure organized under State law; or

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

§ 760.1903 Allowable gross revenue.

(a) For the purposes of this subpart, “allowable gross revenue” includes revenue from:

³The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

(1) Sales of eligible crops produced by the producer, which includes sales resulting from value added through post-production activities that were reportable on IRS Schedule F;

(2) Sales of eligible crops a producer purchased for resale that had a change in characteristic due to the time held (for example, a plant purchased at a size of 2 inches and sold as an 18-inch plant after 4 months), less the cost or other basis of such eligible crops;

(3) The taxable amount of cooperative distributions directly related to the sale of the eligible crops produced by the producer;

(4) Benefits under the following agricultural programs: 2017 WHIP, ARC and PLC, BCAP, LDP, MLG, MFP, the On-Farm Storage Loss Program, and STRP;

(5) CCC loans, if treated as income and reported to IRS;

(6) Crop insurance proceeds for eligible crops, minus the amount of administrative fees and premiums;

(7) NAP payments for eligible crops, minus the amount of service fees and premiums;

(8) ELAP payments for an aquaculture crop;

(9) Payments issued through grant agreements with FSA for losses of eligible crops;

(10) Grants from the Department of Commerce, National Oceanic and Atmospheric Administration and State program funds providing direct payments for the loss of eligible crops or the loss of revenue from eligible crops;

(11) Other revenue directly related to the production of eligible crops that IRS requires the producer to report as income;

(12) For the disaster year only, ERP Phase 1 payments issued to another person or entity for the producer's share of an eligible crop, regardless of the tax year in which the payment would be reported to IRS; and

(13) For the benchmark year only, 2018, 2019 and 2020 WHIP+ and QLA payments.

(b) Allowable gross revenue does not include revenue from sources other than those listed in paragraph (a) of this section, including but not limited to, revenue from:

- (1) Federal assistance programs not included in paragraph (a) of this section;
- (2) Sales of livestock, animal by-products, and any commodities that are excluded from "eligible crops";
- (3) Resale items not held for characteristic change;
- (4) Income from a pass-through entity such as an S Corp or limited liability company;
- (5) Conservation program payments;
- (6) Any pandemic assistance payments that were not for the loss of eligible crops or the loss of revenue from eligible crops;
- (7) Custom hire income;
- (8) Net gain from hedging or speculation;
- (9) Wages, salaries, tips, and cash rent;
- (10) Rental of equipment or supplies; and
- (11) Acting as a contract producer of an agricultural commodity.

(c) A producer is required to certify to an adjusted allowable gross revenue for the benchmark year on FSA-521 if the producer had a decreased operation capacity in a disaster year for which they are applying for ERP Phase 2, compared to the benchmark year.

(d) A producer may certify to an adjusted allowable gross revenue for the benchmark year on FSA-521 if either of the following apply:

(1) The producer did not have a full year of revenue for 2018 or 2019; or

(2) The producer had expanded their operation capacity in a disaster year for which they are applying for ERP Phase 2, compared to the benchmark year.

(e) Change in operation capacity does not include crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or increasing the rate of fertilizers or chemicals. If requested by FSA, producers are required to submit documentation to FSA to support adjustments described in paragraphs (c) and (d) of this section within 30 calendar days of the request. The documentation to support an adjustment due to a change in operation capacity must show that the adjustment to the producer's benchmark revenue is due to an:

(1) Addition or decrease in production capacity of the farming operation;

(2) Increase or decrease in the use of existing production capacity; or

(3) Physical alterations that were made to existing production capacity.

(f) If a producer began farming in 2020 or 2021 and did not have allowable gross revenue in a benchmark year, the producer may certify to an adjusted benchmark allowable gross revenue on form FSA-521 that represents what had been the producer's reasonably expected disaster year revenue prior to the impact of the qualifying disaster event. If requested by FSA, documentation required to support a producer's certification must be provided within 30 calendar days of FSA's request, or the producer will be considered ineligible for ERP Phase 2. Acceptable documentation must be generated in the ordinary course of business and dated prior to the impact of the disaster event and includes, but is not limited to:

(1) Financial documents such as a business plan or cash flow statement that demonstrate an expected level of revenue;

(2) Sales contracts or purchase agreements; and

(3) Documentation supporting production capacity, use of existing production capacity, or physical alterations that demonstrate production capacity.

(g) The allowable gross revenue will be based on the year for which the revenue would be reported for the purpose of filing a tax return, except for the ERP Phase 1 payments specified in paragraph (a)(12) of this section.

(h) Producers who file or would be eligible to file a joint tax return will certify their allowable gross revenue based on what it would have been had they filed taxes separately for the applicable year.

(i) On form FSA-521, for each applicable disaster year, producers must indicate the percentage of their allowable gross revenue from specialty and high value crops and the percentage from other crops. The percentages certified must be equal to the percentages that the producer would have reasonably expected to receive for the disaster year if not for the qualifying disaster event.

§ 760.1904 Time and method of application.

(a) A completed FSA-521, Emergency Relief Program (ERP) Phase 2 Application, must be submitted to the producer's recording county office by the close of business on the date announced by the Deputy Administrator. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60 days from the date of the ERP Phase 2 application deadline, may result in no payment or a reduced payment:

(1) Form AD-2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;

(2) Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, applicable for the program year or years for which the producer is applying for ERP;

(3) Form CCC-901, Member Information for Legal Entities, if applicable;

(4) Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;

(5) Form FSA-510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification, for a legal entity and all members of that entity, for each applicable program year, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400; and

(6) Form AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification, for the ERP Phase 2 applicant and applicable affiliates as provided in 7 CFR part 12.

(c) If requested by FSA, the producer must provide additional documentation that establishes the producer's eligibility for ERP Phase 2. If supporting documentation is requested, the documentation must be submitted to FSA within 30 calendar days from the request or the application will be disapproved by FSA. FSA may request supporting documentation to verify information provided by the producer and the produce's eligibility including, but not limited to, the producer's:

(1) Allowable gross revenue reported on the ERP Phase 2 application;

(2) Percentages of the expected allowable gross revenue from:

(i) Specialty and high value crops; and

(ii) Other crops; and

(3) Ownership share in the agricultural commodities.

§ 760.1905 Payment calculation.

(a) ERP Phase 2 payments will be calculated separately for each disaster year. If a producer indicates that they have expected revenue for both specialty and high value crops and other crops for a disaster year, a payment will be calculated separately for:

(1) Specialty and high value crops; and

(2) Other crops.

(b) To determine a producer's ERP Phase 2 payment amount, FSA will calculate:

(1) The producer's benchmark year allowable gross revenue, adjusted according to 7 CFR 760.1903, if applicable, multiplied by the ERP factor of 70 percent; minus

(2) The producer's disaster year allowable gross revenue; minus

(3) The sum of the producer's net ERP Phase 1 payments for the 2020 program year, if the calculation is for the 2020 disaster year, or for the 2021 and 2022 program years, if the calculation is for the 2021 disaster year; minus

(4) The sum of the producer's net CFAP payments (excluding payments for contract producer revenue), net 2020 WHIP+ payments, and net 2020 Quality Loss Adjustment (QLA) Program payments, if the calculation is for the 2020 disaster year; and

(5) Multiplied by the percentage of the expected disaster year revenue for specialty and high value crops or other crops, as applicable, to determine the separate payments for specialty and high value crops or other crops.

(c) FSA will issue an initial payment equal to the lesser of the amount calculated according to this section or the maximum initial payment amount of \$2,000. If a producer has also received a payment under ERP Phase 1, FSA will reduce the producer's initial ERP Phase 2 payment amount by subtracting the producer's ERP Phase 1 gross payment amount.

(d) After the close of the ERP Phase 2 application period, FSA will issue a final payment equal to the amount calculated according to this section minus the amount of the

producer's initial payment. If total calculated payments exceed the total funding available for ERP Phase 2, the ERP factor may be adjusted and the final payment amounts will be prorated to stay within the amount of available funding. If there are insufficient funds, a differential of 15 percent will be used for underserved producers similar to ERP Phase 1, but with a cap at the statutory maximum of 70 percent. For example, if the ERP Factor is set at 50 percent, the factor used for underserved producers will be 65 percent, but if the factor is set at 55 percent or higher, the factor for underserved producers will be capped at 70 percent.

(e) If a producer receives assistance through CFAP or ERP Phase 1 after their ERP Phase 2 payment is calculated, the producer's ERP Phase 2 payment will be recalculated and the producer must refund any resulting overpayment.

§ 760.1906 Payment limitation and attribution.

(a) The payment limitation for ERP is determined by the person's or legal entity's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, if their average adjusted gross farm income is less than 75 percent of their average adjusted gross income (AGI) for the three taxable years preceding the most immediately preceding complete tax year, a person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in payments for specialty crops and high value crops¹ and \$125,000 in payment for all other crops under:

(1) ERP Phase 1 for program year 2020 and ERP Phase 2 for program year 2020, combined; and

(2) ERP Phase 1 for program years 2021 and 2022 and ERP Phase 2 for program year 2021, combined.

¹High value crops were not defined in ERP Phase 1; therefore, only ERP Phase 1 payments for specialty crops, as defined in the ERP Phase 1 notice of funds availability, will be counted toward the increased payment limitation for specialty and high value crops.

(b) If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities and the producer provides the required certification and documentation, as discussed below, the person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to:

(1) \$900,000 for specialty crops and high value crops combined for:

(i) ERP Phase 1 for program year 2020 and ERP Phase 2 for program year 2020, combined; and

(ii) ERP Phase 1 for program years 2021 and 2022 and ERP Phase 2 for program year 2021, combined.; and

(2) \$250,000 for all other crops for:

(i) ERP Phase 1 for program year 2020 and ERP Phase 2 for program year 2020, combined; and

(ii) ERP Phase 1 for program years 2021 and 2022 and ERP Phase 2 for program year 2021, combined.

(c) The relevant tax years for establishing a producer's AGI and percentage derived from farming, ranching, or forestry related activities are:

(1) Years 2016, 2017, and 2018 for program year 2020; and

(2) Years 2017, 2018, and 2019 for program year 2021.

(d) To receive more than \$125,000 in ERP payments, producers must submit form FSA-510, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification. If a producer requesting the increased payment limitation is a legal entity, all members of that entity must also complete form FSA-510 and provide the required certification according to the direct attribution provisions in 7 CFR 1400.105, "Attribution of Payments." If a legal entity would be eligible for the increased payment limitation based on the legal entity's average

AGI from farming, ranching, or forestry related activities but a member of that legal entity either does not complete a form FSA-510 and provide the required certification or is not eligible for the increased payment limitation, the payment to the legal entity will be reduced for the limitation applicable to the share of the ERP Phase 2 payment attributed to that member.

(e) If a producer files form FSA-510 and the accompanying certification after their ERP Phase 2 payment is issued but before the deadline announced by FSA, FSA will process the form FSA-510 and issue the additional payment amount if a maximum initial payment amount has not been reached.

(f) A payment made to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility. Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership: Any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-level or payment legal entity;

(2) Second level of ownership: Any payment made to a first-level legal entity that is owned in whole or in part by another legal entity (referred to as a second-level legal entity) will be attributed to the second-level legal entity in proportion to the ownership of the second-level legal entity in the first-level legal entity; if the second-level legal entity is owned in whole or in part by a person, the amount of the payment made to the first-level legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-level legal entity by the person;

(3) Third and fourth levels of ownership: Except as provided in the second-level ownership in paragraph (f)(2) of this section and in the fourth level of ownership in

paragraph (f)(4) of this section, any payments made to a legal entity at the third and fourth levels of ownership will be attributed in the same manner as specified in paragraph (f)(2) of this section; and

(4) Fourth-level of ownership: If the fourth level of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-level or payment legal entity in the amount that represents the indirect ownership in the first-level or payment legal entity by the fourth-level legal entity.

(g) Payments made directly or indirectly to a person who is a minor child will not be combined with the earnings of the minor's parent or legal guardian.

(h) A producer that is a legal entity must provide the names, addresses, ownership share, and valid taxpayer identification numbers of the members holding an ownership interest in the legal entity. Payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest, at the first through fourth levels of ownership in the business structure, is not provided to FSA.

(i) If an individual or legal entity is not eligible to receive ERP Phase 2 payments due to the individual or legal entity failing to satisfy payment eligibility provisions, the payment made either directly or indirectly to the individual or legal entity will be reduced to zero. The amount of the reduction for the direct payment to the producer will be commensurate with the direct or indirect ownership interest of the ineligible individual or ineligible legal entity.

(j) Like other programs administered by FSA, payments made to an Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), will not be subject to payment limitation.

§ 760.1907 Eligibility subject to verification.

(a) Producers who are approved for participation in ERP Phase 2 are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving ERP Phase 2 payments must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

§ 760.1908 Miscellaneous provisions.

(a) If an ERP Phase 2 payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment with interest calculated from the date of the disbursement of the payment.

(b) If FSA determines that the producer intentionally misrepresented information provided on their application, the application will be disapproved and the producer must refund the full payment to FSA with interest from the date of disbursement.

(c) Any required refunds must be resolved in accordance with part 3 of this title.

(d) A producer, whether a person or legal entity, that either fails to timely provide all required documentation or fails to satisfy any eligibility requirement for ERP Phase 2, is not eligible to receive ERP Phase 2 payments, directly or indirectly. An ERP Phase 2 payment to an eligible legal entity applicant whose member(s) either fails to timely provide all required documentation or fails to satisfy any eligibility requirement for ERP Phase 2 will be reduced proportionate to that member's ownership interest in the legal entity.

(e) Any payment under this subpart will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or

proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title apply to payments made under this subpart.

(f) For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under ERP Phase 2 but only as to beneficiaries who, as a condition of the waiver, agree to apply the ERP Phase 2 payments to reduce the amount of the judgment lien.

(g) In addition to any other Federal laws that apply to ERP Phase 2, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, and 1001.

§ 760.1909 Perjury.

In either applying for or participating in ERP Phase 2, or both, the producer is subject to laws against perjury and any resulting penalties and prosecution, including, but not limited to, 18 U.S.C. 1621. If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in ERP Phase 2, or both, then the producer may be guilty of perjury and, except as otherwise provided by law, may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

§ 760.1910 Requirement to purchase crop insurance or NAP coverage.

(a) Producers must report all crops that suffered a revenue loss in whole or in part due to a qualifying disaster event on form FSA-522, Crop Insurance and/or NAP Coverage Agreement.

(b) All producers who receive ERP Phase 2 payments must file an accurate acreage report and purchase crop insurance or NAP coverage where crop insurance is not available, for the next 2 available crop years. For each crop reported according to

paragraph (a) of this section, participants must obtain crop insurance or NAP, as may be applicable:

(1) At a coverage level equal to or greater than 60 percent for insurable crops; or

(2) At the catastrophic level or higher for NAP crops.

(c) Availability will be determined from the date a producer receives an ERP payment and may vary depending on the timing and availability of crop insurance or NAP for a producer's particular crops. The final crop year to purchase crop insurance or NAP coverage to meet the second year of coverage for this requirement is the 2026 crop year.

(d) In situations where crop insurance is unavailable for a crop, an ERP participant must obtain NAP coverage. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with an AGI greater than \$900,000 is not eligible to participate in NAP; however, producers with an AGI greater than \$900,000 are eligible for ERP. To reconcile this restriction in the 1985 Farm Bill and the requirement to obtain NAP or crop insurance coverage, ERP participants may meet the purchase requirement by purchasing Whole-Farm Revenue Protection (WFRP) crop insurance coverage, if eligible, or they may pay the applicable NAP service fee despite their ineligibility for a NAP payment. In other words, the service fee must be paid even though no NAP payment may be made because the AGI of the person or entity exceeds the 1985 Farm Bill limitation.

(e) If both Federal crop insurance and NAP coverage are unavailable for a crop, the producer must obtain WFRP crop insurance coverage, if eligible.

(f) For all crops listed on form FSA-522, producers who have the crop or crop acreage in subsequent years and who fail to obtain the 2 years of crop insurance or NAP coverage required as required by this section, must refund the ERP Phase 2 payment with interest from the date of disbursement. Producers who do not plant a crop listed on form

FSA-522 in a year for which this requirement applies are not subject to the crop insurance or NAP purchase requirement for that year.

(g) Producers who received an ERP Phase 1 payment for a crop are not required to obtain additional years of crop insurance or NAP coverage for that crop if they also receive an ERP Phase 2 payment for a loss associated with that crop.

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

29. The authority citation for part 1400 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308-1, 1308-2, 1308-3, 1308-3a, 1308-4, and 1308-5; and Title I, Pub. L. 115-123.

Subpart A—General Provisions

30. Add § 1400.10 to read as follows:

§ 1400.10 Notification of interests.

(a) To facilitate administration of subparts B, C, E, and F of this part for programs specified in § 1400.1, or any other program as provided in individual program regulations in this chapter, a person or legal entity must provide information in the manner as prescribed by the Deputy Administrator.

(b) The information required to be submitted under paragraph (a) of this section must include:

(1) The name, address, valid taxpayer identification number, and ownership share of each person, or the name, address, valid taxpayer identification number, and ownership share of each legal entity, that holds or acquires an ownership interest in the legal entity; and

(2) The name, address, valid taxpayer identification number, and ownership share of each legal entity in which the person or legal entity holds an ownership interest.

(c) Except as provided in paragraph (d) of this section, payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership

interest of less than 10 percent at, or above the fourth level of ownership in the business structure is not provided to USDA. Additionally, A legal entity will not be eligible to receive payment when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater at, or above the fourth level of ownership in the business structure is not provided to USDA.

(d) In order to be eligible to receive any payment specified in § 1400.1(a)(7) or as provided by the Natural Resources Conservation Service in individual program regulations in this chapter, a person or legal entity must provide information in the manner as prescribed by the Deputy Administrator as identified in paragraph (b) of this section. Paragraph (c) of this section does not apply to the identified Natural Resources Conservation Service programs (programs specified in § 1400.1(a)(7) or any other Natural Resources Conservation Service program as specified in the individual program regulations in this chapter).

Subpart B—Payment Limitation

§ 1400.107 [Removed]

31. Remove § 1400.107.

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

32. The authority citation for part 1416 continues to read as follows:

Authority: Title I, Pub. L. 113-79, 128 Stat. 649; Title I, Pub. L. 115-123; Title VII, Pub. L. 115-141; and Title I, Pub. L. 116-20.

Subpart A— General Provisions for Supplemental Agricultural Disaster Assistance Programs

§ 1416.5 [Removed and Reserved]

33. Remove and reserve § 1416.5.

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

34. In § 1416.102, in the definition of “eligible loss condition”, add a sentence at the end of the definition to read as follows:

§ 1416.102 Definitions.

* * * * *

*Eligible loss condition** * * All other causes of losses are not covered, including, but not limited to, negligence, mismanagement, or wrongdoing by the producer.

* * * * *

35. Amend § 1416.103 as follows:

a. Add a sentence to the end of paragraph (a); and

b. In paragraph (d)(6), in the first sentence, remove “transport,” and add “transport” in its place.

The addition reads as follows:

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

(a) * * * All other causes of loss are not considered an eligible loss condition, including, but not limited to, negligence, mismanagement or wrongdoing by the producer.

* * * * *

36. Amend § 1416.104 as follows:

a. Redesignate paragraphs (b)(16) and (17) as (b)(17) and (18), respectively;

b. Add new paragraph (b)(16);

c. Remove paragraph (c)(4);

d. Redesignate paragraphs (c)(5) through (8) as paragraphs (c)(4) through (7), respectively;

e. In newly redesignated paragraph (c)(6), add the word “and” at the end;

f. Revise newly redesignated paragraph (c)(7); and

g. Remove paragraph (c)(9).

The addition and revision read as follows.

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

* * * * *

(b) * * *

(16) Ostriches,

* * * * *

(c) * * *

(7) Livestock that are not produced for commercial use or those that are not produced or maintained in a commercial operation for livestock products, such as milk from dairy, including, but not limited to:

- (i) Any wild free roaming livestock;
- (ii) Horses and other animals used or intended to be used for racing or wagering;
- (iii) Animals produced or maintained for hunting; and
- (iv) Animals produced or maintained for consumption by owner.

* * * * *

Subpart C—Livestock Forage Disaster Program

37. Amend § 1416.204 as follows:

- a. In paragraph (a)(1), add “ostriches,” after “llamas,”;
- b. Revise paragraph (a)(5);
- c. Redesignate paragraphs (b)(15) and (16) as (b)(16) and (17), respectively;
- d. Add new paragraph (b)(15);
- e. Remove paragraph (c)(4);
- f. Redesignate paragraphs (c)(5) through (9) as (c)(4) through (8), respectively;

and

g. Revise newly redesignated paragraph (c)(8).

The revisions and addition read as follows.

§ 1416.204 Covered livestock.

* * * * *

(a) * * *

(5) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to:

- (i) Any uses of wild free roaming livestock;
- (ii) Racing or wagering;
- (iii) Hunting; and
- (iv) Consumption by owner; and

* * * * *

(b) * * *

(15) Ostriches,

* * * * *

(c) * * *

(8) Livestock produced or maintained for reasons other than commercial use, including, but not limited to, livestock produced or maintained for racing or wagering purposes, hunting, or consumption by owner.

Subpart D—Livestock Indemnity Program

38. Amend § 1416.304 as follows:

- a. In paragraph (c)(3), remove the words “for livestock” and add “for livestock sale or” in their place; and
- b. Revise paragraph (c)(4).

The revision reads as follows.

§ 1416.304 Eligible livestock.

* * * * *

(c) * * *

(4) Not be produced or maintained for reasons other than commercial use for livestock sale or for the production of livestock products such as milk or eggs. Livestock excluded from being eligible include, but are not limited to:

- (i) Wild free roaming animals;
- (ii) Horses and other animals used or intended to be used for racing or wagering;
- (iii) Animals produced or maintained for hunting; and
- (iv) Animals produced or maintained for consumption by owner.

* * * * *

39. Amend § 1416.305 as follows:

- a. In paragraph (g) introductory text, remove the words “if reliable” and add the words “if the livestock are not owned by the licensed veterinarian and reliable” in their place;
- b. Revise paragraph (i) introductory text; and
- c. In paragraph (i)(1) introductory text, remove the words “For 2017 and subsequent calendar years, livestock inventory reports by livestock unit must be provided to the local county FSA office by the later of December 3, 2018, or” and add “Livestock inventory reports by livestock unit must be provided to the FSA local county office by” in their place.

The revision reads as follows.

§ 1416.305 Application process.

* * * * *

(i) Unweaned livestock operations may provide proof of death by using the LBIH.

* * * * *

PART 1437 - NONINSURED CROP DISASTER ASSISTANCE PROGRAM

40. The authority citation for part 1437 continues to read as follows:

Authority: 7 U.S.C. 1501-1508 and 7333; 15 U.S.C. 714-714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

Subpart A - General Provisions

41. In § 1437.3, revise the definition of “Application for coverage” to read as follows:

§ 1437.3 Definitions.

* * * * *

Application for coverage means:

(1) The form specified by FSA to be completed by a producer applying for NAP coverage for an eligible crop that is accompanied by the service fee or the service fee waiver form, or

(2) Another applicable form, designated by the Deputy Administrator to qualify as an application for NAP, that the producer has on file with FSA before the deadline for application for the coverage period which certifies they are eligible for a service fee waiver.

* * * * *

§ 1437.6 [Amended]

42. Amend § 1437.6 as follows:

- a. Remove paragraph (a)(1); and
- b. Redesignate paragraphs (a)(2) and (3) as (a)(1) and (2), respectively.

§ 1437.7 [Amended]

43. Amend § 1437.7 as follows:

- a. In paragraph (a), remove the words “in the administrative county office”;
- b. In paragraph (b) introductory text, remove the words “request for” and add the words “certification of eligibility for a” in their place; and
- c. In paragraph (g) add the words “for any buy-up coverage elected” at the end of the first sentence.

PART 1450 - BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

44. The authority citation for part 1450 continues to read as follows:

Authority: 7 U.S.C. 8111.

45. In § 1450.2, add a definition for “Socially disadvantaged farmer or rancher” in alphabetical order to read as follows.

§ 1450.2 Definitions.

* * * * *

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group. A socially disadvantaged group is a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

* * * * *

Gloria Montañó Greene,
Deputy Under Secretary,
Farm Production and Conservation,
U.S. Department of Agriculture.

